

**CORRECTED OPINION
CONDITIONS 4, 19, 28 AND 38**

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/mc/council/board.html

CASE Nos. S-2527, S-2528, S-2529

PETITION OF TWIN PONDS FARM, LLC

OPINION OF THE BOARD
(Opinion Adopted March 9, 2005)
(Effective Date of Opinion: April 25, 2005)

Case No. S-2527 is an application for a special exception pursuant to Section 59-G-2.30.0 (Nursery Horticultural - Wholesale) of the Zoning Ordinance to permit the operation of a wholesale nursery. The petitioner proposes to plant nursery stock for sale to landscape contractors on approximately 8 acres of the 77 acre subject property.

Case No. S-2528 is an application for a special exception pursuant to Section 59-G-2.30.00 (Landscape Contractor) of the Zoning Ordinance to permit the operation of a landscape contracting business.

Case No. S-2529 is an application for a special exception pursuant to Section 59-G-2.30.000 (Manufacture of Mulch and Compost) of the Zoning Ordinance to permit the operation of a manufacturer of mulch and compost. The petitioner proposes to manufacture mulch and compost for sale on approximately 9 acres of the 77-acre subject property.

Pursuant to Section 59-A-4.125, the Board of Appeals referred the cases, consolidated by Resolution effective August 28, 2002, to the Hearing Examiner to conduct the public hearing and provide the Board with a written report and recommendation. The Hearing Examiner issued reports, in each of the three cases, dated November 5, 2003, recommending approval in each case, with conditions.

The subject property is Parcel P400, located at 15315 Mt. Nebo Road, Poolesville, Maryland, in the RDT Zone.

The Board of Appeals considered the reports and recommendations from the Hearing Examiner, together with requests for oral argument before the Board from Stephanie and John Egly, Poplar Spring Animal Sanctuary, the Audubon Naturalist Society and Sugarloaf Citizens Association at its Worksession on November 26, 2003. The Board found that it required additional factual

information before it could reach a decision, and, effective January 9, 2004, remanded the cases to the Hearing Examiner.

On September 28, 2004, the Hearing Examiner held an additional hearing in the cases, and on January 11, 2005 issued supplemental Reports and Recommendations for approval of the special exceptions. The Board of Appeals again considered the reports and recommendations from the Hearing Examiner, together with requests for oral argument at its Worksession on March 9, 2005.

Decision of the Board: Special Exceptions **Granted** Subject
To Conditions Enumerated Below.

After careful consideration and review, the Board finds that the Hearing Examiner has compiled a thorough and complete record in the cases. Therefore, the Board denies the requests for oral argument, adopts the Reports and Recommendations of the Hearing Examiner, and grants the special exceptions subject to the following conditions:

Condition Nos. 1-16 Apply to All Three Cases:

1. The Petitioner is bound by all of the Petitioner's testimony and exhibits of record and is bound by the testimony of the Petitioner's witnesses and attorneys' representations, to the extent that the evidence and representations are identified in this report and recommendation (Section 59-A-4.127).
2. The Petitioner is bound by all submitted statements and plans, as revised.
3. Commercial vehicle access to the site for the three Special Exceptions is restricted to left turn ingress from and right turn egress onto Mt. Nebo Road via a channelized island on the southernmost driveway. At the time of permitting by the Department of Permitting Services, the Department will submit the design of the channelized island for the southernmost driveway to the Rustic Roads Advisory Committee for review and comment.

No special exception-related truck or other heavy vehicle traffic to and from the site may use Mt. Nebo Road south of the subject property to reach River Road. The Petitioner must inform contractors visiting the site and companies that have delivery activities associated with any of the three uses of this restriction and the Petitioner is responsible for their adherence to this restriction.

Only employees working primarily in the business office (up to four (4) employees), those with business in the office, and the three (3) managing members of Twin Ponds Farm, LLC may use the northernmost driveway and park in that area.

4. For the three Special Exceptions, a total of one outside contractor may be on the property per day, and no more than ten (10) per month. Such contractor may have up to five (5) employees to carry out the work on the site.

The work of contractors shall be limited to: 1) property maintenance; 2) maintenance of equipment and structures; 3) driveway maintenance; 4) pesticide application; **5) use of a processor for grinding and/or shredding raw materials for mulch manufacturing; and 6) mucking out sediment traps and ponds.** Such activities are anticipated to be infrequent, generally on an as-needed basis (usually annually or semi-annually).

No third party contractor deliveries of materials for customers or storage are permitted unless specifically authorized by the terms of the Special Exceptions.

5. Operations on the site are limited to those shown on the accompanying Special Exception Site Plan (Exhibit 208(b)).

6. The Petitioner shall install the landscaping described on the revised Site Plan (Exhibit 208(b)) during the first planting season after the Board of Appeals approves the Special Exception and shall properly maintain the landscaped areas and promptly replace any dead trees. A majority of the trees for screening along the boundary line with the Thomassen property shall be Thuja "Green Giant" evergreens. At the time of installation, all buffer trees shall be at least 5 feet in height above the top of the proposed 2 foot to 3 foot berm (for a total height above the general grade of 7 to 8 feet).

7. The only track vehicles used on the property shall be (1) a loader and (2) the vehicles used by the independent contractor to process materials for the Manufacturing of Mulch and Composting Special Exception operations.

8. There shall be no burial or burning of any material on the Subject Property.

9. Any relevant federal, state or county agency shall have the right to inspect any Special Exception, pursuant to standard procedures for access to the property.

10. The Petitioner shall designate a representative to coordinate with the Community Liaison Committee established in conjunction with these uses. The Community Liaison Committee shall include adjacent and confronting property owners and a representative from the Sugarloaf Citizen's Association. The People's Counsel shall be an ex officio member of the Committee. The Committee shall meet four times a year and meetings shall be arranged and noticed by the Petitioner.

11. Petitioner shall keep a log of all vehicles, except employees' personal vehicles, entering or leaving the property, that will contain the time of day the vehicle enters and departs the site, the truck type and size, the type of load or purpose of trip, the truck number (for Petitioner's vehicles), as well as the special exception to which the trip is assigned and the entity responsible for the vehicle (e.g., Petitioner, third party contractor, etc.). In addition to company vehicles, the log will record all vehicles delivering or picking up materials from the site as well as vehicles used by independent contractors performing maintenance or processing functions on the site.

12. All logs referred to in Condition of Approval number 11 above shall be compiled annually and provided to the Board of Appeals, along with minutes of

all Community Liaison Committee meetings for that year, until such time as the Board of Appeals agrees to terminate this requirement. The date for submission shall be the anniversary date of the issuance of this Opinion.

13. The Petitioner shall install a steel, double-lined 300 gallon tank for #2 diesel fuel and a steel, double-lined 300 gallon tank for gasoline. The tanks shall be inspected regularly and replaced as needed.

14. The Petitioner shall maintain at least \$1,000,000 in liability insurance from an insurance company rated A or better. A Certificate of Insurance shall be made available upon request.

15. The only activities allowed on the special exception sites on Sunday shall be in connection with monitoring of the mulch manufacturing use. There shall be no operation of equipment on Sunday in connection with any of the special exception uses.

16. Subdivision shall be required for each of the three special exceptions, pursuant to the provisions of Chapter 50-9 of the Montgomery County Code.

Conditions Solely for Case No. S-2527 (Wholesale Horticultural Nursery):

17. A Final Forest Conservation Plan must be submitted to the M-NCPPC, CWP, Environmental Division prior to issuance of a Sediment and Erosion Control Permit and any building permit (if required by the Department of Permitting Services).

18. An approved concept Stormwater Management Plan must be submitted to the M-NCPPC, CWP, Environmental Division prior to approval of the Final Forest Conservation Plan and issuance of sedimentation and erosion control permits.

19. Hours of operation for delivery or pick-up related to this use are limited to 7:00 a.m. to 7:00 p.m., Monday through Friday, and 7:30 a.m. to 4:30 p.m. on Saturday, provided that employees may arrive between 6:45 and 7:00 a.m. Operation of machinery or departures to job sites is not permitted before 7:00 a.m. on weekdays or 7:30 a.m. on Saturday. **For all three special exception uses there shall be a maximum of 20 entrances to, and exits from, the site (i.e., equivalent to 10 round trips) by trucks per day, Monday through Saturday.**

20. Any person or entity handling, storing or spraying any pesticides or fertilizer must have a Certified Private Applicator Certificate issued by the Maryland Department of Agriculture. Copies of all required notifications regarding application of pesticides and herbicides will be forwarded to the address specified for the Community Liaison Committee established for these Special Exceptions.

21. No more than two (2) vehicles per day and five (5) vehicles per week may make deliveries to and/or pick-ups from the property (after the initial installation of all plant material), excluding deliveries and/or pick-ups via the 12 vehicles used for the Landscape Contractor Special Exception operation. Only one vehicle per month may be a tractor-trailer, all other vehicles must be no larger than a thirty cubic yard capacity truck. Any tractor-trailer visiting the site in connection with the use may not visit

the site on the same day as the tractor-trailer visit to the site in connection with either of the other Special Exceptions.

For all three special exception uses, there shall be a maximum total of 15 truck trips per day, Monday through Friday.

Trucks picking up trees or other plant materials must enter via the channelized driveway and access the nursery via the gravel access road. After loading, they must exit via the same route. They may not use the northernmost driveway.

22. No more than two (2) employees (who are primarily employees of the Landscaping Contractor operation) may be used to maintain the Nursery, excluding the three (3) individual members of Twin Ponds Farms, LLC and the occasional use of outside contractors used to perform specialized tasks which cannot be performed by the employees dedicated to any of the Special Exceptions (such as pesticide application, etc.) as defined and limited in Condition 4.

23. Equipment to be used for this Special Exception shall be stored within the Landscape Contractor Equipment Storage area or storage structure(s) so that the equipment is not visible from the street, in the locations noted on the Special Exception Site Plan. Vehicles to be used and stored on the site will include the following, or similar machinery: (1) a front end loader and (2) a "Bobcat" with spade attachment (both of which are also used on the farm and/or mulch/composting operation).

24. The existing storage building closest to the north property line shall only be used for farm equipment. When, and if, the building is used for the Wholesale Horticultural Nursery Special Exception operation, the building must be relocated along the same axis to meet the setback requirement in the RDT Zone.

Conditions Solely for Case No. S-2528 (Landscape Contractor):

25. A Final Forest Conservation Plan must be submitted to and approved by M-NCPPC, CWP, Environmental Division prior to issuance of a Sediment and Erosion Control Permit. This plan shall indicate placement of Category One conservation easement on all areas required for forest retention by the Forest Conservation Law. The Plan must show afforestation of the stream valley buffer in the area of the existing compost piles.

26. An approved concept Stormwater Management Plan must be submitted to the M-NCPPC, CWP, Environmental Division prior to approval of the Final Forest Conservation Plan and issuance of sedimentation and erosion control permits.

27. Hours of operation for delivery or pick-up related to this use are limited to 7:00 a.m. to 7:00 p.m., Monday through Friday, and 7:30 a.m. to 4:30 p.m. on Saturday, provided that employees may arrive between 6:45 and 7:00 a.m. Operation of machinery or departures to job sites is not permitted before 7:00 a.m. on weekdays or 7:30 a.m. on Saturday.

28. This Special Exception is limited to using no more than twelve (12) commercial pick-up trucks, each anticipated to make no more than one round-trip per day, or similar vehicles, a maximum of thirty (30) feet in length weighing less than 26,000 pounds (trailers may be attached to such vehicles), in addition to one tractor-trailer per month to make deliveries. Any tractor-trailer visiting the site in connection with the use may not visit the site on the same day as a tractor-trailer visit to the site in connection with either of the other Special Exceptions.

For all three special exception uses there shall be a maximum of 20 entrances to, and exits from, the site (i.e., equivalent to 10 round trips) by trucks per day, Monday through Saturday.

The parking area for the vehicles shall be screened by evergreen trees as reflected on the Site Plan. The parking area shall accommodate 30 vehicles. This will accommodate anticipated vehicles of workers and storage for the 12 trucks associated with this use, and occasional use by contractors performing tasks as defined and limited in Condition 4.

Equipment and supplies to be used for this Special Exception must be stored so that the equipment is not visible from the street, in the locations noted on the Site Plan. Equipment to be stored on the site will consist of the following, or similar:

- up to 12 trailers for hauling equipment
- lawn mowing equipment
- snow removal equipment, and
- assorted smaller equipment

Materials to be occasionally stored on site will include auxiliary supplies such as mulch and plant materials required for jobs.

29. The existing storage building closest to the north property line shall only be used for farm equipment. When, and if, the building is used for the Landscape Contractor Special Exception operation, the building must be relocated along the same axis; adjusted to meet the setback requirement in the RDT Zone.

30. Petitioner is limited to no more than twenty-eight (28) employees for this Special Exception, excluding the three (3) members of Twin Ponds Farm, LLC. This use is also authorized to occasionally employ outside contractors to perform specialized tasks which cannot be performed by employees dedicated to any of the Special Exceptions (such as pesticide application, etc.) as defined and limited in Condition 4.

31. Prior to implementation of this Special Exception, the existing residential tenancy of the dwelling unit on the property shall be terminated in order to provide sanitary facilities for the employees of the landscape contractor operation.

Conditions Solely for Case No. S-2529 (Manufacture of Mulch):

32. A Final Forest Conservation Plan must be submitted to and approved by M-NCPPC, CWP, Environmental Division prior to issuance of a Sediment and Erosion Control Permit. This plan shall

indicate placement of Category One conservation easement on all areas required for forest retention by the Forest Conservation Law. The Plan must show afforestation of the stream valley buffer in the area of the existing compost piles.

33. Hours of operation for the use of general equipment for this Special Exception are limited to 8:30 a.m. to 4:30 p.m., or daylight hours, whichever is less, Monday through Friday. However, deliveries may occur between 7:00 a.m. and 7:00 p.m., Monday through Friday. Saturday operations shall be limited to pick-ups and deliveries in conjunction with the Landscape Contractor operation; provided that up to 2 employees in addition to the Certified Compost Operator will be permitted to monitor the windrows and perform any necessary operations to maintain safe conditions at the site on Saturday and Sunday.

34. Stormwater Management and Sediment and Erosion Control Plans must be consistent with the Final Forest Conservation Plan and must be approved by the Montgomery County Department of Permitting Services prior to issuance of Sedimentation and Erosion Control permits. The Sediment and Erosion Control Plan must include, but not be limited to, fifty (50) foot wide grass swales, berms and sediment basins. All sedimentation and control measures must be located entirely outside the stream valley buffer.

35. A final Soil Conservation Plan approved by the Natural Resource Conservation Service and consistent with the Sediment and Erosion Control Plan, Stormwater Management Plan and the Final Forest Conservation Plans must be submitted to the M-NCPPC, CWP, Environmental Division prior to issuance of Sediment and Erosion Control permits.

36. No more than eight (8) vehicles per day may make deliveries to and/or pick-ups from the property, excluding deliveries to and/or pick-ups via the 12 vehicles used for the Landscape Contractor operation.

For all three special exception uses, there shall be a maximum total of 15 truck trips per day, Monday through Friday.

37. The Petitioner is limited to use of a processor for grinding and/or shredding raw materials to no more than three (3) days per month, that will usually be sequential. Use of this machine is limited to weekdays between 8:30 a.m. and 4:30 p.m. A log, in the same form as the sample log submitted to the record (Exhibit 150), shall be maintained to identify the days and hours of operation of the processor.

38. Only one tractor trailer per month may visit the site in conjunction with this Special Exception. This visit may not be on the same day as a tractor-trailer visit to the site in connection with either of the other Special Exceptions. **For all three special exception uses there shall be a maximum of 20 entrances to, and exits from, the site (i.e., equivalent to 10 round trips) by trucks per day, Monday through Saturday.**

39. Petitioner must obtain all permits required by state or county agencies, including, but not limited to, a Natural Wood Waste Recycling Facility Permit from the Maryland Department of the

Environment, and registration to create a 'Soil Conditioner' product (i.e., the compost) from the Maryland Department of Agriculture.

40. The operation must implement the fire prevention plan below:

- a. No smoking permitted on the site of this Special Exception.
- b. No burning of wood waste is permitted on the site of this Special Exception.
- c. A 'dry' fire hydrant must be installed, along the gravel path leading into the property, alongside the existing ponds that will connect the two ponds to allow Fire and Rescue Services to draw water from the ponds for fire suppression purposes. Water from the ponds may not be used for any other purpose.
- d. The Petitioner shall maintain the existing gravel road. Such maintenance shall include, but not be limited to, monthly inspections to identify and fill any potholes and the addition of gravel or asphalt tabs to the entire road surface, as permitted by the Department of Permitting Services in accordance with the Statement of Operations.
- e. The Petitioner must implement dust suppression measures relating to the gravel road and windrows as described in the Statement of Operations.
- f. A Certified Compost Operator must regularly inspect the windrows. Windrows will be turned when internal temperatures reach 140 degrees Fahrenheit.
- g. Windrow size is limited to ten (10) feet high, twenty (20) feet wide and three hundred (300) feet long; the surge pile is limited to twenty (20) feet high, twenty (20) feet wide and one hundred fifty (150) feet long.
- h. Windrows must be spaced to permit emergency vehicle access between rows.

41. The Petitioner may not accept any manure for use in the Manufacture of Mulch and Composting operation.

42. The Petitioner shall comply with the odor control measures in the Statement of Operations.

43. A sign identifying the hours of operation for deliveries and pick-ups and the emergency contact number shall be posted at the entrance to the property. The sign shall conform to the draft sign submitted to the record (Exhibit 151).

44. A duly qualified Certified Compost Operator (as defined by COMAR 15.18.04.03) must supervise the private contractors who run the processor or make deliveries to the Site, and supervise the inspection and maintenance of the windrows. A Certified Compost Operator shall be on duty or on call twenty-four (24) hours a day. The Petitioner shall submit to the Board of Appeals the names of all persons holding this certification.

45. Equipment to be used and/or stored on the site will include the following, or similar machinery:

- (1) a specialized windrow turner or windrow turner attachment for a tractor (tractor used on the farm) to be stored in the mulch manufacture area;
- (2) a processor run by a typical tractor/combine diesel engine (such as a “Bandit” recycler) to break down raw materials into smaller sizes (this item will be transported to site and may be left in the mulch manufacture area on a temporary as-needed basis consistent with the limits for use of the item in Condition 20 (no more than three (3) weekdays per month);
- (3) up to two tractors (also used on the farm) to manage and move materials that will generally be stored in the mulch manufacture area;
- (4) up to two front-end or track loaders (2 - 5 cubic yard bucket) to manage and move materials (as used as part of the nursery operation and farm operation) that will generally be stored in the mulch manufacture area;
- (5) an additional two (2) loaders may be brought to the site on an as-needed basis to expedite organic debris material processing by independent contractors when material or equipment is taken to the site), provided the loaders are not stored on site; and
- (6) a trammel screen, soil shredder and/or soil screen to sift larger pieces (i.e., partially decomposed material) from the final product to be stored in the proximity of the pole barn in the mulch manufacture area.

46. Petitioner will comply with Chapter 3, Air Pollution, and Chapter 31B, Noise Pollution (for residential receiving areas), of the Montgomery County Code.

47. Employees associated with this use are limited to one full-time employee to manage the operation, who must be a qualified Certified Compost Operator, as described in Condition 27, with assistance from up to two (2) additional employees (who are primarily employees of the Landscape Contractor operation). This excludes the individual members of the Petitioner-LLC.

However, an independent contractor hired to perform raw materials processing associated with this Special Exception on an occasional basis for the use defined in Condition 4 and limited in Condition 20, may bring up to three (3) additional employees to assist in this work.

The use is also authorized to occasionally employ outside contractors to perform specialized tasks which cannot be performed by the employees dedicated to any of the Special Exceptions as defined and limited by Condition 4.

48. The Petitioner must obtain approval of a Nutrient Management Plan from the Maryland Department of Agriculture for the Special Exception within six (6) months of approval.

49. Prior to abandonment of the Manufacture of Mulch and Composting use, the Petitioner must remove all materials associated with that Special Exception use from the site. In addition, the

Petitioner must re-seed and stabilize all areas used in the Special Exception composting operations, as prescribed by the Montgomery County Soil Conservation Service.

50. Rows of finished compost product shall not exceed fifty (50) feet high, fifty (50) feet wide and one hundred (100) feet long, excluding product stored under the existing pole barn. Rows of finished mulch shall not exceed twenty (20) feet high, twenty (20) feet wide and one hundred (100) feet long.

34. All raw Natural Wood Waste must be processed within 30 days of receipt.

51. No additives, such as phosphates, lime or fertilizer may be added to the compost or mulch.

52. Petitioner shall only accept Natural Wood Waste as defined in COMAR 29.04.09.02(B)(4), except that no food materials shall be accepted. Any solid waste other than Natural Wood Waste shall be stored in the appropriate container and removed from the property.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 25th day of April, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
TWIN PONDS FARM, LLC

Petitioner

John Hughes
Carl F. Starkey
Jagdish Mandavia
Stephen Tawes
Andrew Der
Philip Perrine
Jeremy Criss
Edward Mulheron
Alan Finneyfrock

For the Petition

Erica Leatham, Esquire

Attorney for Petitioner

Chief Roger Strock
David Rotolone
William Butler
Nancy Koerting
Rhody R. Holthaus
Susan Scala-Demby
Peter DiLima
Martin Klauber, People=s Counsel

Neither in Support of nor in Opposition
to the Petition

Appeals Case No. S-2527

Board of

(OZA
H Referral
No. 02-34)

*****	*		
Stephanie Egly			*
John D. Egly			*
Hagos Gebre	*		
Robert A. Thomassen	*		
Jane S. Hunter, individually and representing	*		
Sugarloaf Citizens Association	*		
Dolores Milmoie, representing		*	
Audubon Naturalists Society and			*
F.A.R.M. (For A Rural Montgomery)		*	
Robert Chapman, representing the Izaak		*	
Walton League			*
Beverly Strauss			*
Terry Cummings			*
Brett Michaels			*
Diane Hogan	*		
James Evans		*	
	*		
In Opposition to the Petition			*
*****	*		

Before: David R. Podolsky, Hearing Examiner

HEARING EXAMINER=S REPORT AND RECOMMENDATION

I. STATEMENT OF THE CASE

Petition S-2528, filed June 3, 2002, requests a special exception to permit a wholesale horticultural nursery on Parcel P400, which is a 77-acre parcel located at 15315 Mt. Nebo Road on the east side of Mt. Nebo Road in the Rural Density Transfer Zone at a location near River Road, southwest of Poolesville. The application was filed jointly with Petition S-2528, which requests a special exception to permit a landscape contractor use on the subject property, and with Petition S-2529, which requests a special exception to permit a manufacture of mulch and compost use on the site.

By Resolution dated July 31, 2002 and effective September 13, 2002, the Board of Appeals referred the above-captioned matter to the Office of Zoning and Administrative Hearings (OZAH) acting under the provisions of 59-A-4.125 of the Montgomery County Zoning Ordinance. The Board requested the OZAH to schedule and conduct a hearing on the petition and submit a report and recommendation for consideration by the Board. By Resolution adopted June 26, 2002 and effective August 28, 2002, Cases S-2527, S-2528 and S-2529 were consolidated.

The instant petition was initially reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated November 15, 2002 (Exhibit 36), recommended approval of the Petition subject to three general conditions applicable to all three petitions and three conditions applicable to the wholesale nursery use.¹ The Planning Board considered the Petition on November 21, 2002, and, by a 5 to 0 vote, recommended approval of the

¹ The Technical Staff also proposed separate conditions that would be applicable only to the landscape contractor use and to the manufacture of mulch and compost use.

first phase of each special exception subject to 3 conditions (one of which relates only to the mulch and compost manufacturing use) in addition to the conditions recommended by the Technical Staff (Exhibit 43).

Initially, a hearing was scheduled by the OZAH for October 18, 2002. This hearing was rescheduled to December 13, 2002 to permit the Planning Board to issue its recommendation prior to the commencement of the hearing. At the request of the Opposition, the hearing was rescheduled to February 10, 2003 and was rescheduled again to March 4, 2003. A public hearing was convened by the undersigned Hearing Examiner on March 4, 2003. Subsequent hearings were conducted on March 7, 2003, March 18, 2003, April 4, 2003, April 22, 2003, May 2, 2003, June 20, 2003, July 7, 2003 and September 5, 2003. In addition, at the request of the Opposition, the Hearing Examiner conducted a site visit on May 6, 2003. Various scheduled hearing dates from March to September 2003 were postponed at the request of one or more parties.

During the course of these proceedings, People=s Counsel attempted to mediate disputes between the Petitioner and the Opposition. People=s Counsel reported to the Hearing Examiner that, while he believed that certain issues were subject to resolution, the parties were unable to complete negotiations in face-to-face meetings. The undersigned Hearing Examiner offered the parties the opportunity to participate in voluntary, non-binding, Aoff the record= mediation to determine if the Petitioner and the Opposition could resolve their differences. The parties were advised that they were not required to participate in this process, any agreements reached by some, but not all of the parties, would not be binding on any party that did not wish to be bound and, nothing said or done in the mediation sessions would be considered evidence of record or would be considered in connection with the Hearing Examiner=s Report and Recommendation to the Board of Appeals.²

At the conclusion of the mediation sessions, a status conference was held on August 20, 2003, to determine if, subsequent to the mediation sessions the parties were able to resolve any outstanding issues without the assistance of the mediator. At the status conference, it became clear that, although many issues were being addressed, the parties had irreconcilable differences. The Hearing Examiner requested that the Petitioner prepare revised proposed conditions of approval including those modifications that the parties were able to agree to through the mediation process and to submit those to the Opposition for review. Members of the Opposition agreed to meet with People=s Counsel on August 28, 2003 to review the revised proposed conditions of approval and to advise the Petitioner, on August 29, 2003, of any discrepancies between the revised proposed conditions and the Opposition=s understanding of the agreements reached by the parties, as well as any proposed clarifying language. The Petitioner was then to submit final proposed conditions of approval to the Opposition on September 2, 2003 so that the Opposition could identify any issues that the Opposition believed were not adequately addressed when the Opposition presented closing arguments which were scheduled for September 5, 2003.

² For a more detailed discussion of the mediation process see Exhibit 140. Mediation sessions took place on July 28, 2003 and July 29, 2003. Although several modifications to the Petitioner=s plan of operations were made and the Petitioner consented to certain conditions of approval regulating the Petitioner=s operations, several parties remain in opposition to the Petition.

On September 5, 2003, a hearing was convened and certain materials that the parties had requested or had agreed to provide prior to the close of the record were submitted. People=s Counsel was unable to attend the September 5, 2003 session and, at his request, closing arguments were rescheduled for October 1, 2003. Closing argument was held on October 1, 2003 and the record was left open until October 7, 2003 for the submission of two documents discussed at the closing argument, to wit: the Petitioner=s final revised proposed conditions of approval and a revised phasing plan. On October 7, 2003, the record was closed.

II. BACKGROUND FACTS

For the convenience of the reader, the background facts are grouped by subject matter. Where there are any conflicts in the evidence, they are resolved under the preponderance of evidence test.

A. The Subject Property

The subject property is a 77-acre parcel located on the east side of Mt. Nebo Road in the Rural Density Transfer Zone at a location near River Road, southwest of Poolesville. The address of the subject property is 15315 Mt. Nebo Road, Poolesville, Maryland. The location of the site is depicted on page 6, *infra*. Of the 77 acres comprising the subject property, the Petitioner initially proposed to use 10.4 acres for the mulch and compost manufacturing operation³, 7.8 acres for the nursery operation, and .33 acres for the landscape contractor use. The 58-acre balance of the property would remain in forest or agricultural operations.

The property currently contains one single family dwelling and two storage buildings. The majority of the land remains in agricultural use, open field or with forest cover, and row crop agriculture has been the primary use of the property. The northeast side of the site contains a portion of a small stream that flows east toward Horsepen Branch.

³ During the course of these proceedings, the Petitioner modified its proposal to reduce the acreage devoted to mulch and composting operations to approximately 3.7 acres.

Access to the property is via two existing gravel driveways. One driveway runs near the northern property boundary to the dwelling and storage buildings. The other driveway extends in an easterly direction from Mt. Nebo Road approximately through the center of the property to the rear (east) section. The subject property is generally level, dropping slightly toward the east. There are two ponds on the property, approximately one-half acre each, located between the southern driveway and the forested area along the northern property boundary. There is a slight ridge at the approximate center of the property, draining to the east and west. The location of the driveways, fields, forested areas and other existing conditions can be seen on the final phasing plan (Exhibit 161(b)), a reduced copy of which is reproduced on page 8, *infra*.

An area containing approximately 3 acres at the east end of the subject property is currently used for the manufacture of mulch and compost for use on the crops raised on the property. The Petitioner asserts that this is a use permitted by right in connection with the continuing farming activity on the property. The Opposition disputes the Petitioner's contentions regarding the existing operations.

The subject property surrounds a parcel containing approximately 6 acres owned by Mr. and Mrs. John D. Egly. Mr. and Mrs. Egly's property contains a home, barn and horse pastures.

B. The Neighborhood and Its Character

The surrounding area is wholly within the agricultural reserve and is rural in nature. Nearby uses include agricultural operations to the north, east and west, and several large lot residential uses to the south. Adjacent properties to the west, east and southeast are heavily wooded. The large lot residential uses to the south include a mixture of open fields and woodland. The size of the parcels, location of buildings and extent of tree cover on nearby properties is depicted on the vicinity map reproduced on page 9, *infra*.

C. Summary of Proposal

As indicated above, the Petitioner proposes to operate a wholesale horticultural nursery along with a landscape contractor use and a mulch and compost manufacturing operation on the subject property. The

Petitioner proposes to plant nursery stock for sale to landscape contractors, including stock for the use of the landscaping contracting operation proposed for the property. The nursery is to be located in the northwest portion of the property with a total of approximately 7.7 acres devoted to this use (see Phasing Plan reproduced on page 8 and the Special Exception Site Plan, Exhibit 154). This use would be implemented in three phases, and these areas would remain as row crop fields until the nursery operation is implemented.

Excluding outside contractors who would apply pesticides or herbicides and the members of the Petitioner-LLC, no more than two employees would be required to maintain this use. The nursery employees would also assist with the two other proposed uses. Initially, some tractor-trailers would deliver plant material to establish the nursery. Thereafter, little additional traffic is anticipated for this use, as the primary consumer of these plant stocks would be the Petitioner's landscape contracting operation. This use involves little activity outside the growing season.

The nursery, which involves planting, watering and letting the trees and other plants grow, would be located in the northwestern section of the property, between the two existing driveways. The nursery would provide screening of the other uses from the road and the neighboring properties to the west and north. The wholesale nursery operation would generate less than 5 additional trips per day as, after the initial installation of plant materials, traffic related to this use would be limited to not more than 2 vehicles per day and 5 vehicles per week making deliveries to and/or picking up materials from the property, plus vehicles of outside contractors who may apply pesticides or perform other services. This limit does not include vehicles and trips that have been assigned to the proposed landscape contractor use or trips for general purposes by the individual members of the Petitioner. The vehicles of customers (landscape contractors) would not exceed a 30 cubic yard capacity. After the initial installation, not more than one tractor-trailer per month would visit the site to make deliveries to restock the nursery.

The access point to the site is from Mt. Nebo Road, a two-lane roadway with a posted speed limit of 25 mph, classified as a Rustic Road. The Petitioner proposes to limit commercial access to a route going north on Mt. Nebo, east on West Offutt and south on West Willard to River Road. Technical Staff recommended that access to the site be restricted to a left turn in and right turn out only so that no traffic using this site may use Mt. Nebo Road to the south to and from River Road. This would include the vehicles of the operations on the site, and all of their customers and suppliers. The Petitioner agreed to the restriction recommended by the Technical Staff and to channelize access to the primary driveway to prevent the use of Mt. Nebo Road to the south.

The portion of Mt. Nebo Road south of the site to River Road is narrow (approximately 14' to 16') and contains substandard vertical/horizontal curves and two one-lane bridges. River Road, from the Mt. Nebo intersection to West Willard Road is similarly restricted. Under the Petitioner's proposal, all traffic visiting the site would be prohibited from using this portion of Mt. Nebo Road.

Mt. Nebo Road north of the site is generally approximately 18' wide. West Offutt Road and West Willard Road, also classified as Rustic Roads, are approximately 18' and 24' wide with posted speed limits of 30 mph and 35 mph, respectively. None of these road segments have substandard curves or vehicle weight restrictions.

Vehicles to be used and stored on the site in conjunction with this special exception would include the following, or similar machinery: (1) a front end loader and (2) a Bobcat with spade attachment (both of which also would be used on the farm and/or mulch/composting operation).

The Petitioner submitted an analysis of the anticipated amount of water usage from the operation of the proposed uses that breaks down water usage by amounts related to the nursery operation and to the manufacture of mulch and composting operation. The nursery operation usage is measured in gallons per day while the composting operation usage is measured in gallons per year. According to Technical Staff, this information indicates that the maximum amount of water usage from the combined operations in any given day would be 6,180 gallons, below the 10,000 gallons per day Aheavy user≡ threshold.

This analysis assumes there will be no rainfall, which produces a Aworst-case≡ scenario and consequently, assumes more water usage than is likely to occur. Because the nursery stock would normally require water eight months of the year, the average annual water use indicates a minimal water usage of less than 2,000 gallons per day for both operations. Some areas of the remainder of the property that would continue to be farmed may also require irrigation.

After discussions with the Opposition, the Petitioner agreed to a condition of approval that the
AHours of operation for delivery or pick-up related to this use are limited to
7:00 a.m. to 7:00 p.m., Monday through Friday, and 7:30 a.m. to 4:30 p.m.
on Saturday.≡

To aid in enforcing this condition, the Petitioner agreed to keep a log of all company vehicles operating from the property, in the same form as the sample log submitted for the record (Exhibit 150).⁴

The access point to the site is from Mt. Nebo Road, a two-lane roadway with a posted speed limit of 25 mph, classified as a Rustic Road. The Petitioner proposes to limit commercial access to a route going north on Mt. Nebo, east on West Offutt and south of West Willard to River Road. Technical Staff recommended that access to the site be restricted to Aleft turn in and right turn out only≡ so that no traffic using this site may use Mt. Nebo Road to the south to and from River Road. This would include the vehicles of the operations on the site, and all of their customers and suppliers. The Petitioner agreed to Achannelize≡ access to the primary driveway to prevent the use of Mt. Nebo Road to the south as recommended by the Technical Staff.

⁴ The Hearing Examiner is recommending a somewhat expanded log (see recommended condition number 19).

The portion of Mt. Nebo Road south of the site to River Road is narrow (approximately 14' to 16') and contains substandard vertical/horizontal curves and two one-land bridges. River Road, from the Mt. Nebo intersection to West Willard Road is similarly restricted. Under the Petitioner=s proposal, all traffic visiting the site would be prohibited from using this portion of Mt. Nebo Road.

Mt. Nebo Road north of the site is generally approximately 18' wide. West Offutt Road and West Willard Road, also classified as Rustic Roads, are approximately 18' and 24' wide with posted speed limits of 30 mph and 35 mph, respectively. None of these road segments have substandard curves or vehicle weight restrictions.

The Petitioner agreed to the following additional conditions of approval with respect to the Wholesale Nursery use:

16. If required by Chapter 22A of the Montgomery County Code, a Final Forest Conservation Plan must be submitted prior to issuance of a Sediment and Erosion Control Permit (if required by the Department of Permitting Services).
17. If required by Chapter 19 of the Montgomery County Code, an approved concept Stormwater Management Plan must be submitted to the M-NCPPC Environmental Staff prior to approval of the Final Forest Conservation Plan and issuance of sedimentation and erosion control permits.

* * *

- d. Any person or entity handling, storing or spraying any pesticides or fertilizer must have a Certified Private Applicator Certificate issued by the Maryland Department of Agriculture. Copies of all required notifications regarding application of pesticides and herbicides will be forwarded to the address specified for the Community Liaison Committee established for these Special Exceptions.
2. No more than two (2) vehicles per day and five (5) vehicles per week may make deliveries to and/or pick-ups from the property, after the initial installation of all plant material, excluding deliveries and/or pick-ups via the vehicles used for the Landscape Contractor Special Exception operation. Only one vehicle per month may be a tractor-trailer, all other vehicles may be no larger than a thirty cubic yard capacity truck.
3. No more than two (2) employees may be used to maintain the Nursery, excluding the individual members of the Petitioner-LLC and outside contractors used to perform specialized tasks which cannot be performed by the employees dedicated to any of the Special Exceptions (such as pesticide application, etc.).

4. Equipment to be used for this Special Exception shall be stored so that the equipment is not visible from the street, in the locations noted on the Special Exception Site Plan. Vehicles to be used and stored on the site will include the following, or similar machinery: (1) a front end loader and (2) a ABobcat[®] with spade attachment (both of which are also used on the farm and/or mulch/composting operation).

Finally, the Petitioner proposed that the following conditions apply to all three cases (S-2527, S-2528 and S-2529).

1. The Petitioner is bound by all submitted statements and plans, as revised.
5. Access to the site for the three Special Exceptions is restricted to left turn ingress from and right turn egress onto Mt. Nebo Road via a channelized island. No special exception-related traffic to and from the site may use Mt. Nebo Road to the south to reach River Road. The Petitioner must inform contractors visiting the site and companies that have delivery activities associated with any of the three uses of this restriction and the Petitioner is responsible for their adherence to this restriction.
6. For the three Special Exceptions, a total of one outside contractor may be on the property per day. Such contractor may have more than one employee to carry out the work on the site.
7. Operations on the site are limited to the following, as shown on the amended Phasing Plan submitted by the Petitioner (Exhibit 161(b)):
 8. Phases 1, 2 and 3 of the Wholesale Nursery operation.
 9. Phases 1, 2 and 3 of the Landscape Contractor operation; however, vehicles associated with the Landscape Contracting operation shall not exceed twelve (12) vehicles stored on-site.
 10. Phase 1 of the Manufacture of Mulch and Composting operation.
11. The Petitioner shall properly maintain the landscaping areas and promptly replace any dead trees.
12. The only track vehicles used on the property shall be (1) a loader and (2) the vehicles used by the independent

contractor to process materials for the Manufacturing of Mulch and Composting Special Exception operations (see Condition 15(d)[21]).

13. There shall be no burial or burning of any material on the subject properties of these Special Exceptions.
14. Any relevant federal, state or county agency shall have the right to inspect any Special Exception, pursuant to standard procedures for access to the property.
15. The Petitioner shall designate a representative to coordinate with the Community Liaison Committee established in conjunction with these uses. The Community Liaison Committee shall include adjacent and confronting property owners and a representative from the Sugarloaf Citizen=s Association. The Committee shall meet twice a year for three (3) years from the date of approval of the Special Exceptions and meetings shall be arranged and noticed by the Petitioner. The People=s Counsel shall receive notice of all meetings.
16. All required logs shall be made available upon request by the Montgomery County Department of Permitting Services, Montgomery County Department of Environmental Protection, the Maryland Department of the Environment and the Maryland Department of Agriculture during normal business hours. Petitioner shall distribute copies of required logs to members of the Community Liaison Committee at meetings held pursuant to Condition 9, above. In addition, all logs shall be complied [sic] annually and provided to the Board of Appeals, along with summaries of all Community Liaison Committee meetings for that year.
17. The Petitioner shall install a steel, double-lined 300 gallon tank for #2 diesel fuel. The tank shall be inspected regularly and replaced as needed.
18. The Petitioner shall maintain at least \$1,000,000 in liability insurance from an insurance company rated A or better. A Certificate of Insurance shall be made available upon request.

III. SUMMARY OF TESTIMONY

The following is a **summary** of the testimony that was presented in connection with Case No. S-2527. It should be noted that some testimony, although primarily related to one of the other two cases (S-2528 or S-2529), may affect the decision in the present case due to the cumulative effects of the three proposed special exceptions as well as the inter-relationship between the three proposed special exceptions. Therefore, testimony relevant to all three cases is described in this Report. However, because each special exception must stand or fall on its own merits, testimony related solely to one of the other two cases is not repeated in this Report. It should be noted that some testimony presented early in these proceedings was superseded by subsequent modifications to the proposed operations.

John Hughes, a member of the Petitioner, testified that he believes the Petitioner is entitled to operate a nursery of 2 acres in size as a matter of right. However, the Petitioner wants to be able to expand the nursery to complement the proposed landscape contractor use. Mr. Hughes testified that the nursery would purchase plant materials, and water, prune and otherwise grow the plants and trees on the subject site for eventual installation on other properties, either by the Petitioner's landscape contractor business or by other landscape contractors. There would be no retail sales of nursery materials. The nursery would be operated by 2 employees. These employees would also assist in the operation of the other uses on the site.

Mr. Hughes explained that there would be a substantial initial delivery of plant materials. After the initial planting, there would be occasional deliveries for restocking purposes. He summarized the operation as Aplant, water and let grow.≡ The deliveries of the plant material would typically be made by a tractor-trailer. The Petitioner agreed that, after the initial installation of plant materials, no more than 2 vehicles per day and no more than 5 vehicles per week would make deliveries to and/or pick up materials from the subject property. This limitation would not include deliveries or pickups by the proposed landscape contractor use. However, those deliveries and pickups would be limited by the proposed conditions of approval for that use. After initial stocking, only 1 vehicle per month would be a tractor-trailer and any other vehicles would be no larger than a 30 cubic yard capacity truck. In addition to the 2 employees who would operate the nursery, outside contractors may visit the site to perform specialized tasks that cannot be performed by the employees, such as pesticide application.

On cross-examination, Mr. Hughes testified that less than 10 tractor-trailer loads would be required to start the nursery. Although, initially, he testified that a tractor-trailer might make a delivery every 2 weeks or so during the season, the Petitioner subsequently agreed to limit the tractor-trailer deliveries to not more than 1 per month.

Jeremy Criss, an agricultural services manager with the Montgomery County government, testified that the proposed use would be consistent with the agricultural uses in the neighborhood. Mr. Criss testified that a nursery is a type of agricultural use and that the proposed mulch and composting use would support the nursery.

Carl F. Starkey, who was recognized as an expert in transportation planning and traffic engineering, testified on behalf of the Petitioner. He stated that he is familiar with the Zoning Ordinance, Adequate Public Facilities Ordinance and Montgomery County road regulations. He described the travel routes and volumes of traffic that travel the roads that would be used by the vehicles for each of the proposed special exceptions. He testified that the roads that would be used

by these vehicles (Mt. Nebo Road to the north of the site, West Offutt Road and West Willard Road) have low volumes for roads with the capacity of these roads. Accordingly, Mr. Starkey concluded that the proposed use, even in conjunction with the other two proposed special exceptions, would not adversely impact the roadways. He described the volume of traffic generated by the proposed uses as minimal and stated that the Technical Staff concurred with his finding that the volume of traffic generated by the proposed uses would not create any problems.

Mr. Starkey testified that the road network has a capacity for 8,000 trips per day. Currently, there are approximately 200 trips per day on Mt. Nebo and West Offutt Roads. Mr. Starkey testified that the proposed use would generate not more than 5 peak hour trips and, therefore, would not affect the capacity of the roads and would not congest the area roads. He stated that the cumulative traffic generated by all three proposed uses would not have a material detrimental effect on area roads. The total number of trips would increase to approximately 270 trips per day⁵ if the three proposed special exceptions are granted. Mr. Starkey testified that the roads to be used by the Petitioner have no weight restrictions and more than adequate radii at all intersections. Mr. Starkey stated that all relevant intersections operate at level of service A. He testified that currently, some tractor-trailers use Mt. Nebo Road and West Offutt Road. According to Mr. Starkey, approximately 4% to 11% of the vehicles on these roads are large trucks. He testified that the traffic volume on West Offutt Road is approximately 19 vehicles per hour. This figure represents a total for traffic in both directions. Thus, there is 1 vehicle every 3 minutes in one direction or the other. He testified that the roads meet geometric design criteria for low volume roads.

Mr. Starkey testified that the entrance to the subject property would be channelized so that vehicles would be required to make a right turn when exiting the property and would have to enter the property by making a left turn from southbound Mt. Nebo Road. According to Mr. Starkey, the channel is designed to County standards and would effectively prevent truck traffic from using Mt. Nebo Road to the south of the subject site.

Jagdish Mandavia, an expert in civil engineering, testified on behalf of the Petitioner. Almost all of his testimony related to the mulch and composting use. He stated that the Petitioner's operations would not create a nuisance.

Stephen Tawes testified as an expert in landscape architecture and site planning. He described the site plan submitted by the Petitioner. Mr. Tawes testified that agricultural uses surround the property which is in the RDT Zone. He stated that the proposed uses would operate at the same scale of activity as surrounding uses. According to Mr. Tawes, the three proposed uses have been sited to minimize their impact on the neighborhood. He does not believe that the proposed use would have any non-inherent impacts. Mr. Tawes emphasized that all parking for the proposed uses would be on site and would be screened from Mt. Nebo Road and from the Eglys property. He noted that all three uses would be operated at least 50 feet from any property line. Mr. Tawes stated that he has spent 6 hours on the site over the course of 3 visits during the summer and fall. Mr. Tawes testified that the proposed nursery use is low impact, causes little activity and is a passive use. He noted that the nursery would help screen the other proposed uses on the site.

⁵ These calculations assumed 15 teams of 2 employees for the landscape contractor use as originally proposed. The number of landscape contractor teams was reduced to 12 during the course of these proceedings.

Andrew Der testified that he prepared an environmental impact analysis. Most of his testimony related to the mulch and compost production use. However, he testified that the Petitioner will provide a 100-foot buffer around all streams and that the site is not hydrologically connected to the surrounding area. He testified that distances and existing vegetation provide adequate sound buffering for all three uses.

Philip Perrine, a land use planning expert, testified on behalf of the Petitioner. He stated that he has visited the site and driven around the area. He reported that the area is designated for agricultural and open space uses under the Master Plan. He described the relevant neighborhood and stated that it contains agricultural and related uses, large open tracts of farmland, some residences on large tracts to the south along Mt. Nebo Road, and the Isaak Walton League property to the east that is used for recreational purposes. He described the area as agricultural in nature and noted that the site is in the RDT Zone. Mr. Perrine testified that all three proposed uses are permitted as special exceptions in the RDT Zone. Mr. Perrine asserted that the inherent aspects of the wholesale nursery use are organized planting, the use of soil enrichment materials and the use of trucks to remove plants for installation at job sites. He testified that the proposed use would have no non-inherent impacts. In Mr. Perrine's opinion, the proposed nursery would not be a nuisance, would be a low intensity use, and would be consistent with a farm setting. Also, in his opinion, the proposed use is compatible with the surrounding area. He testified that, prior to 1985, the three special exceptions requested by the Petitioner were treated as one unified special exception use. According to Mr. Perrine, the three proposed special exceptions are typically grouped together. He noted that the Zoning Ordinance requires a lenient application of the standards for special exceptions in an agricultural area. He disputed the Opposition's contention that the neighborhood is a one-family residential area.

Beverly Strauss, a realtor who lives on Westerly Avenue in Poolesville, testified in opposition. She believes that property values will drop as a result of the proposed special exceptions. She is concerned that the traffic generated by the proposed use would create noise and that people run stop signs. In response to questioning, she acknowledged that she was not familiar with the amount of traffic that would be generated by the proposed use and that she has not reviewed the file or listened to the testimony in these cases. She testified that the proposed special exception would have the same effect anywhere in the RDT Zone and, accordingly, does not believe that this use should be permitted in the RDT Zone.

Terry Cummings, of 15200 Mt. Nebo Road, testified that she lives across Mt. Nebo Road from the site on a 430-acre parcel of land upon which she operates an animal sanctuary. She testified that she is concerned regarding truck traffic on Mt. Nebo Road. Ms. Cummings stated that school busses frequently visit her property so that children can interact with the animals at the sanctuary. She is concerned that the school busses and the Petitioner's trucks may have difficulty passing each other in opposite directions. Ms. Cummings testified that normally 4 or 5 school busses and 8 other vehicles visit the animal sanctuary each day. Typically, visitors are at the animal sanctuary between 10 a.m. and 2 p.m. to visit the farm animals. Ms. Cummings has had as many as 1,000 visitors on a Farm Day. The animal sanctuary operates fund raisers in September that involve about 900 visitors between the hours of 1:00 p.m. and 4:00 p.m. The animal sanctuary is open 7 days per week. Animals are delivered to the animal sanctuary on trucks and trailers. On cross-examination, Ms. Cummings testified that she is not aware of any conflicts between busses and trucks occurring during the year preceding her testimony.

Hagos Gebre, of 14929 Mt. Nebo Road, testified that he works in the District of Columbia and used to live there as well. He moved to the Poolesville area to have a quiet environment. In the past several months Mr. Gebre has noticed several more trucks on Mt. Nebo Road. He believes this is changing the character of the neighborhood. Mr. Gebre is concerned about the possible impact of the proposed activities on property values. He was not able to identify any non-inherent effects of the proposed use.

Robert A. Thomassen, of 15001 Mt. Nebo Road, whose property adjoins the subject property, testified that he is concerned with increased traffic on Mt. Nebo Road and the noise that may be generated by the trucks using the gravel road on the Petitioner=s property. He pointed out that some of the trees that would screen the Petitioner=s property from the Thomassens= property are located on the Thomassens= property. Most of Mr. Thomassen=s testimony related to Cases S-2528 and S-2529.

John D. Egly, of 15115 Mt. Nebo Road, testified in opposition. Although most of his testimony related to the mulching and composting operation, he stated that in his opinion, the neighborhood is a rural residential area and that there are no Afarms≡ in the area. Mr. Egly believes that the proposed channelization of the driveway entrance would change the vista along Mt. Nebo Road.

Brett Michaels, of 14920 Mt. Nebo Road, testified that he is concerned regarding the noise that the proposed uses may generate. He stated that he is aware of a case in which Mr. Hughes told a truck driver not to drive south on Mt. Nebo Road, but the driver drove in that direction anyway. He believes that the proposed channelization would help the situation, but that some trucks may use Mt. Nebo Road to the south despite the Petitioner=s efforts. Mr. Michaels believes that all three special exceptions are inconsistent with the agricultural preserve and allowing them in the RDT Zone would affect property values.

Dolores Milmo testified on behalf of the Audubon Naturalists Society and AFor A Rural Montgomery≡ (F.A.R.M.). Although most of Ms. Milmo=s testimony related to the proposed mulch and composting operation, she testified that Mt. Nebo and West Offutt Roads are rustic roads that she believes are not adequate for truck traffic.

Stephanie Egly, of 15115 Mt. Nebo Road, testified in opposition. Ms. Egly presented a video tape (Exhibit No. 104) showing conditions along West Willard Road, West Offutt Road and Mt. Nebo Road. The video tape revealed Ms. Egly=s vehicle passing a truck going in the opposite direction on West Willard Road. Ms. Egly testified that West Willard Road has a 35 mile per hour speed limit and West Offutt Road has a 30 mile per hour speed limit. She testified that the paved surface of West Offutt Road narrows to 15 feet at one bridge, 14 feet at another bridge and 13 feet 10 inches at another spot. She stated that the speed limit on Mt. Nebo Road is 25 miles per hour and that Mt. Nebo Road narrows to as little as 11 feet 5 inches in width at one point south of the site. The video tape showed Ms. Egly=s vehicle passing a car going in the opposite direction without slowing down. Ms. Egly testified that there are a lot of school busses on West Offutt and Mt. Nebo Roads. Ms. Egly acknowledged that her vehicle passed (in the opposite direction) 4 or 5 cars during the 20-minute video. She acknowledged that school busses and cars currently meet each other from opposite directions and are able to pass. She stated that the major issue is the speed of the trucks.

Diane Hogan, of 15001 Mt. Nebo Road, testified that she owns and resides on a property adjacent to the subject property. Ms. Hogan expressed concern regarding the noise of trucks driving over the gravel driveway.

In rebuttal, Mr. Perrine testified that almost all roads in the agricultural preserve are rustic. Therefore, almost any special exception use in the RDT Zone must use rustic roads for access. According to Mr. Perrine, this renders the use of rustic roads an inherent aspect of any use that is allowed by special exception in the RDT Zone. He testified that the area is agricultural - not residential in nature because residential lots comprise approximately 5% of the surrounding area. He noted that the zone requires that residential lots have at least 25 acres per parcel, although smaller lots have been Agrandfathered.≡ He acknowledged that all 8 residential lots to the south of the site along Mt. Nebo Road are smaller than 25 acres. Mr. Perrine stated that the area is not residential according to the Master Plan, which describes the area as agricultural. He noted that the Isaak Walton League property to the east of the subject property contains 493 acres and is a working conservation farm. Mr. Perrine drew a distinction between the RDT Zone which expresses a preference for agricultural uses and other rural zones which allow 1 house per 5 acres. According to Mr. Perrine, this distinction means that in the RDT Zone, the residential uses must be compatible with the agricultural uses, whereas in the rural residential zones, the agricultural uses must be compatible with the residential uses. Mr. Perrine also testified that the Arustic≡ roads designation is not intended to affect the use of abutting properties.

Mr. Starkey testified in rebuttal that school busses are currently safely negotiating the route that would be followed by the trucks that would pick up plant materials from the nursery. He viewed the narrow areas described by Ms. Egly in her testimony and stated that within 160 feet of each narrow area there is a spot that provides at least 22 feet of clear surface without a 2-foot dropoff. Therefore, although a vehicle might have to slow or stop to allow a vehicle in the opposite direction to pass at the narrowest areas of the road, he believes that this can be accomplished safely.

Jane Hunter, of 20400 West Hunter Road, Beallsville, Maryland, testified individually and on behalf of the Sugarloaf Citizens Association. Although most of her testimony related to Case No. S-2529, she expressed concern regarding noise generated by the trucks visiting the nursery. She testified that the trucks used in connection with the proposed operation would generate noises that differ from the existing country sounds generated by the wind and birds. She acknowledged that there is little traffic on area roadways, but stated that the ample capacity encourages speeding. She believes that the proposed use would be better located in an industrial area where there are more suitable roads. Ms. Hunter expressed concern regarding the enforceability of a condition of approval requiring that the use-related traffic not use Mt. Nebo Road to the south of the site. Ms. Hunter stated that, based on the past history of the Petitioner, she doubts that the Petitioner will enforce any routing requirements. In Ms. Hunter=s opinion, although there is road capacity for the trips generated by the proposed uses, the total volume of trips would change the character of the neighborhood. She believes that the weight of the trucks that would be used would damage the roads, which she stated were not designed for daily truck traffic. According to Ms. Hunter the roads will be reduced to rubble. She asserted that the roads to be used by the vehicles visiting the site are on the Bicycle Master Plan.

Several residents of the area submitted letters in opposition but did not testify. The Cabin John Citizen=s Association supported the Petition. In assessing the credibility of the testimony, it should be noted that, while the Opposition raised many serious concerns and presented significant evidence, many of the Opposition=s allegations were not supported by a preponderance of the evidence of record. For example, the Opposition asserted that the Petitioner=s current operations do not comply with laws or regulations in numerous ways. However, Exhibit 158, submitted by the

Opposition, reveals that, upon investigation, most allegations of non-compliance were deemed to be unfounded.

IV. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided pre-set legislative standards are met. The special exception is evaluated in a site-specific context because there may be locations where it is not appropriate. Nevertheless, a special exception use is deemed compatible within the zoning district in which it is authorized unless specific adverse conditions at the proposed location are shown to overcome this presumption. Impacts which are inherent in the special exception use, regardless of where it is located within the zoning district, may not be the sole basis for denial of a special exception.

Further, Section 59-G-2.30.0 which establishes standards for wholesale horticultural nursery uses states:

- (8) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones.

The proposed use is considered an agricultural-commercial special exception under the Zoning

Ordinance. Section 59-C-9.3 (c).

A. Standard for Evaluation

Sec. 59-G-1.2.1. Standard for evaluation.

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

Analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic and environmental effects. It is understood that every special exception has some or all of these effects in varying degrees. What must be determined during the course of review is whether these effects are acceptable or will create adverse impacts sufficient to result in a denial. To that end, inherent adverse effects associated with the use must be determined. The general neighborhood affected by the proposed use is predominantly rural with a mixture of agricultural and one-family residential uses. The immediate neighborhood contains large lot residential uses to the south and predominantly agricultural or open space uses to the west, north and east.

The inherent, generic physical and operational characteristics arising from the given use, in this case a wholesale nursery, include delivery and pick-up of nursery stock, temporary storage of mulch and compost, storage of business vehicles and equipment, storage buildings and an office. In the present case, one of the primary customers of the wholesale nursery would be the landscape contractor use. Inasmuch as the vehicles taking nursery materials to the locations where they will be planted are already on the site and these trips have been assigned to the landscape contractor use (S-2528), the proposed nursery would generate less traffic than if it were a Afree-standing use that sold only to unrelated entities that would make special trips to the site to pick up plant materials. Also, the number and size of vehicles involved in the delivery of mulch and compost to aid in the plants=development would be significantly reduced if the mulch and compost can be produced on site (i.e. if S-2529 is granted).

The Technical Staff concluded that the proposed wholesale nursery would not have any non-inherent impacts. Although the Opposition vigorously opposed the proposed landscape contractor use and manufacture of mulch and compost, the Opposition did not identify any non-inherent impacts of the wholesale nursery that would justify denial of this special exception. While the inherent impacts of the proposed use would be minimized if the other two special exceptions are granted, even if the other special exceptions are denied, there are no inherent or non-inherent impacts that would justify denial of the wholesale nursery use.

With respect to the cumulative effects of the three proposed uses, the Technical Staff did not identify any non-inherent effects and found that the inherent effects would be less than if the uses were located in a more densely populated residential area. The Technical Staff concluded that all of the special exception activities proposed by the Petitioner are arranged on the site in a logical manner and are 50 feet or more from all property lines. The special exception site plan for the proposal (Exhibit 154) identifies where activities would occur on the site.

Volume of traffic can present a non-inherent adverse effect. While increased volumes of traffic can occur in commercial and industrial areas with little impact, in a zone that includes residential uses, the timing and frequency can be of significant concern. In this case, the number of trips (5) that would be generated by this use is minimal. Based on the volume of traffic anticipated, the effects of traffic would be below average for a wholesale nursery and, therefore, inherent. Even if the other special exceptions are not granted, the additional trips made by unrelated landscape contractors or deliveries of mulch and compost would be no greater than would be inherent in a Afree-standing wholesale nursery. The area road system would continue to operate efficiently with intersections at level of service A.

The Opposition asserts that the use of Mt. Nebo Road, which is a Rustic Road, by the Petitioner=s trucks is a non-inherent characteristic. However, as indicated above, a certain amount of traffic, including truck traffic, is inherent in the use. Also, the Petitioner agreed to channelize the entrance to the site so that ingress and egress would be left turn in, right turn out only, so as to prevent the use of Mt. Nebo Road to the south of the site. This would keep truck traffic off the section of Mt. Nebo Road that traverses the portion of the neighborhood where most residences are located as well as the section where visibility is most obscured by hills and turns.

While some parcels in the RDT Zone abut or are near higher grade roadways, much of the RDT is served by roads similar to Mt. Nebo Road and West Offutt Road. Thus, the use of such roads cannot be considered non-inherent. If operated in accordance with the Statement of Operations (Exhibit 152) and the conditions of approval proposed by the Petitioner, as modified by the Hearing Examiner, the use would have no non-inherent impacts and the inherent impacts would be sufficiently mitigated to supporting granting the petition.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a).

Sec. 59-G-1.21. General conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

The proposed use is permitted by special exception in the Rural Density Transfer Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The proposed use, as limited by the Statement of Operations and recommended conditions of approval, complies with the standards and requirements for the use in Division 59-G-2 as is discussed in more detail on pages 33 and 34, infra.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

As found by the Technical Staff, Planning Board and Mr. Perrine, the proposed uses are consistent with the Master Plan for the Preservation of Agricultural and Rural Open Space, as they are specifically noted as Agricultural-Commercial uses in the zoning ordinance, and therefore appropriate, with the recommended limits on the uses, in the Rural Density Transfer Zone (see Exhibit 36, at page 16).

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

The Technical Staff found that the proposed use, as limited by the Petitioner and by staff recommendations, would be in harmony with the general character of the rural area. Although, as the Opposition asserts, there are some residences to the south of the site along Mt. Nebo Road, the general character of the neighborhood is rural and the majority of the acreage is devoted to agricultural or open space uses. By implementing measures to assure that traffic to and from the site does not use Mt. Nebo Road south of the site, the impact of the proposed use on the residential portion of the neighborhood is significantly mitigated. The limited number of trips related to this use would avoid any material change to the character of the neighborhood resulting from traffic. The proposed use would be located several hundred feet from the nearest residence. The on-site activities associated with the use would provide screening for the other proposed uses from both Mt. Nebo Road and neighboring properties to the northwest. The proposed use would not require new structures nor would it materially increase the intensity of activity or traffic. Parking for the proposed use is adequate and would be well screened. Of the three proposed uses, the wholesale nursery would have the least impact on the neighborhood as it is, in essence, Atree farming≅ which would be harmonious with the Agricultural Reserve.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use, as limited by the Petitioner's Statement of Operation and the proposed conditions of approval, would not be detrimental to this rural area. As discussed above, the use would not have any non-inherent impacts. Other than a small amount of traffic, most neighbors would not notice the presence of the use. Despite the large distance between the Egly's house and the parking area for the proposed use, the Egly's may

be aware of some activity on the site. However, the screening proposed by the Petitioner as well as the recommended conditions of approval would ameliorate the effects of the use to the extent that the use would not be a material detriment to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use, as limited by the Petitioner's Statement of Operations and by the recommended conditions of approval, would not cause objectionable noise, vibrations, fumes, odors, dust or other impacts. As Technical Staff found, the potential for impact is limited by the large size of the property, the operation plan, and the specific limitations and modifications agreed to by the Petitioner. After the installation of the initial plant stock, the proposed use would be almost indistinguishable from an orchard or other similar farming operation.

There is no evidence that the wholesale nursery use (as distinguished from mulch manufacture) would generate any noticeable fumes or odors nor is there any evidence the use would cause objectionable illumination or glare.

The Opposition expressed concern regarding noise, vibrations and dust that might be generated by the few trucks using the gravel driveway on the site. In response, the Petitioner agreed to maintain the driveway and to abide by a dust suppression plan. These measures combined with the distance of the driveway from abutting properties, the limits on the number and size of vehicles, the limited hours of operation and other restrictions on the use would prevent a material amount of objectively objectionable noise, vibrations or dust from impacting nearby properties.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

As the Technical Staff and Mr. Perrine concluded, the proposed use is not located in a one-family residential area. The proposed special exception use is consistent with the recommendations of the Master Plan. The evidence does not reveal the existence of any other special exceptions in the neighborhood.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

For the reasons discussed above and below, the Technical Staff and Mr. Perrine correctly concluded that the proposed use would not adversely affect the health, safety, security, morals, or general welfare of residents, visitors or workers in the area, irrespective of any adverse effects the use might have if established elsewhere in the zone.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

The proposed use would not require any public school facilities. This use, as distinguished from the proposed mulch and composting use, would not require any additional police or fire protection or storm drainage. The Opposition expressed concern regarding the adequacy of water and sanitary facilities on site to serve the employees. However, it would take only two employees to operate this use and these employees would assist with the other proposed uses. The Petitioner submitted correspondence from Harry Sandberg of the Montgomery County Department of Permitting Services (Exhibit 149) stating that:

The septic system currently serving the on-site single family residence is adequate to serve 30 persons as proposed by Mr. Hughes on a strictly commercial basis.

The evidence reveals that the proposed use would generate almost no noticeable additional traffic on Mt. Nebo Road and West Offutt Road and, even combined with the traffic that would be generated by the uses proposed in S-2528 and S-2529, all intersections in the area would operate at level of service A. By prohibiting special exception traffic south of the site on Mt. Nebo Road, the Petitioner would avoid those sections of Mt. Nebo Road where improvements to the public road might be necessary to handle the special exception traffic.

The Opposition asserts that Mt. Nebo Road north of the site and West Offutt Road are inadequate to accommodate the cumulative traffic that would be present if all three special exceptions are granted. It is undisputed that these roads are rural in character with limited or, in some areas, no shoulder space. Thus, large vehicles must use care when passing other large vehicles heading in the other direction. However, the pickup trucks and any other trucks not exceeding 30 feet in length or 13 tons in weight would be able to safely pass the few other vehicles they may

encounter on their way to or from the site. Eighteen-wheel tractor-trailers present a greater concern. However, the Petitioner has agreed to a condition of approval that only one such truck per month may visit the site in connection with the wholesale nursery use.

It must be noted that, currently, refuse collection trucks and delivery trucks regularly use West Offutt Road and Mt. Nebo Road. The testimony of Terry Cummings was particularly helpful in evaluating this issue. Ms. Cummings operates an animal sanctuary located directly across Mt. Nebo Road from the Subject Property. Ms. Cummings testified that the sanctuary holds open houses that involve 900 to 1000 visitors on certain days and is frequently a field trip destination for school classes. According to Ms. Cummings, 4 or 5 school busses per day visit the sanctuary. It is apparent that sometimes an arriving or departing school bus must pass by another school bus or truck on Mt. Nebo Road or West Offutt Road. Ms. Cummings is not aware of any collisions or other similar incidents involving school busses visiting or departing the sanctuary. Moreover, the school bus arrivals and departures are at least as likely to conflict with truck traffic making deliveries to and collections from area farms or residences as would the vehicles visiting the Petitioner's site.

Finally, although Mt. Nebo Road is a Rustic Road, the designation of Rustic Road status is not to be used to limit otherwise permitted land uses. Page 5 of the Rustic Roads Master Plan states: AThe rustic roads designation is not intended to affect the use of adjoining land except in the design of access to subdivision. Further, the area of Mt. Nebo Road of primary interest in the Rustic Road Master Plan description is the southern end, where truck traffic is to be prohibited. The Plan states: AThe northern half (of Mt. Nebo) is generally flat with long, straight sections. The site is located in the rural policy area, where the County's roadway design standards do not include pedestrian facilities due to the relatively low level of pedestrian activity and inconsistency with rural character. The proposed uses are not expected to generate pedestrian activity along public roadways.

The undersigned agrees with Technical Staff that the proposed use would be served by adequate public services and facilities.

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The proposed special exception does not require approval of a preliminary plan of subdivision. The proposed use meets Local

Area Transportation Review and the Policy Area Transportation Review requirements.

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The proposed use, as limited by the Statement of Operations and recommended conditions of approval, would not have a material detrimental effect on the safety of vehicular or pedestrian traffic. Although even one additional car or truck can have some effect, for the reasons discussed in detail above, the effects of the proposed use would be minimal and would not materially affect the safety of vehicular or pedestrian traffic.

C. Specific Standards

Sec. 59-G-2.30.0. Nursery, horticultural - wholesale.

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a retail horticultural nursery, a landscape contractor, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board's opinion must specify which combination of uses is approved for the specified location.

The proposed application is for a combination of a wholesale horticultural nursery, a landscape contractor, and a manufacture of mulch and compost.

- (1) Plants, trees, shrubs, seeds, and bulbs may be grown or produced and sold on a wholesale basis.

The Petitioner proposes to sell such horticultural products - primarily trees and shrubs - on a wholesale basis from plant stock brought in and grown for a time before being sold.

- (2) Fertilizers, plant foods, and pesticides must not be produced but may be stocked and sold on a wholesale basis.

Only the mulch and compost material manufactured on the site in conjunction with the special exception for mulch/compost manufacture (S-2529) is proposed to be sold.

- (3) The following activities are not allowed unless the Board has also approved a retail nursery or garden center under Section 50-G-2.30 (1):

- (i) The sale or storage of any equipment other than equipment needed in the operation of the nursery or greenhouse.

- (ii) The retail sale of plant materials or garden supplies or equipment.

The Petitioner does not propose to operate a retail nursery or garden center. The Petitioner does not propose to sell or store any equipment other than equipment needed in the operation of the nursery. The Petitioner does not propose to sell plant materials or garden supplies or equipment to retail customers.

- (4) The minimum area of the lot is 2 acres.

The proposed use is on a 77-acre property.

- (5) The minimum building setback from any property line is 50 feet.

The Petitioner proposed to use existing storage barns for storing equipment and supplies. One of the existing barns does not currently meet the setback requirement. The Petitioner has agreed to a condition of approval that this structure must be moved to meet the setback requirement before it can be used for the special exception use. All of the other existing structures meet the required setbacks.

- (6) Parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse in Article 59-E.

No parking area is proposed specifically related to this use. The parking requirement is based on floor area provided, and no structure is proposed for this specific use. The use would share parking area with the related landscape contractor use on the site.

- (7) Adequate screening and buffering must be provided for all parking areas and other on-site operations having a potentially adverse impact on adjoining residential or agricultural uses.

No buffering is recommended by Technical Staff or the Planning Commission for this use, as the only operation is growing horticultural products. The shared parking area would be screened by evergreen trees to the south of the gravel driveway. The residence to be converted into an office would be screened by plantings along the north property line and would be screened from Mt. Nebo Road by the nursery stock.

- (8) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones.

The proposed use has an Agricultural-commercial character (Section 59-C-9.3(c)), and the wholesale nursery would have little impact on the surrounding uses. As the Technical Staff concluded, the wholesale horticultural nursery is wholly appropriate in this rural area of the Rural Density Transfer Zone, which is an agricultural zone (Section 59-C-9.1).

59-G-1.22. Additional requirements.

- (a) The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.

In order to protect nearby properties and the general neighborhood, the Petitioner should be required to comply with all of the conditions of approval as set forth under

Section V. Recommendations, below. It should be noted that most of the Opposition=s evidence related to the manufacture of mulch and compost use and to a lesser extent to the landscape contractor use. Very little opposition to the wholesale horticultural nursery was presented.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions, I recommend that Petition No. S-2527, for a special exception under the Rural Density Transfer Zone for a wholesale horticultural nursery use, on property known as Parcel P400, which is a 77-acre parcel located at 15315 Mt. Nebo Road on the east side of Mt. Nebo Road at a location near River Road, southwest of Poolesville, Maryland, be approved subject to the following conditions:

1. The Petitioner is bound by all of the Petitioner=s testimony and exhibits of record and is bound by the testimony of the Petitioner=s witnesses and attorneys= representations, to the extent that the evidence and representations are identified in this report and recommendation (Section 59-A-4.127).
2. The Petitioner is bound by all submitted statements and plans, as revised.
3. Access to the site for the three special exceptions is restricted to left turn ingress from and right turn egress onto Mt. Nebo Road via a channelized island. No special exception-related traffic to and from the site may use Mt. Nebo Road to the south to reach River Road. The Petitioner must inform contractors visiting the site and companies that have delivery activities associated with any of the three uses of this restriction and the Petitioner is responsible for their adherence to this restriction.
4. For the three special exceptions, a total of one outside contractor may be on the property per day. Such contractor may have more than one employee to carry out the work on the site.
5. Operations on the site are limited to the following, as shown on the amended Phasing Plan submitted by the Petitioner (Exhibit 161(b)):
 2. Phases 1, 2 and 3 of the Wholesale Nursery operation.⁶
 3. Phases 1, 2 and 3 of the Landscape Contractor operation; however, vehicles associated with the Landscape Contracting operation shall not exceed twelve (12) vehicles stored on-site.
 4. Phase 1 of the Manufacture of Mulch and Composting operation.

6. The Petitioner shall install the landscaping described on the Revised Site Plan (Exhibit 154) prior to commencement of operations⁷ and shall properly maintain these landscaped areas and promptly replace any dead trees. A majority of the trees for screening along the boundary line with the Thomassen property shall be Thuja AGreen Giant= evergreens. At the time of installation, all buffer trees shall be at least 5 feet in height above the top of the proposed 2 foot to 3 foot berm (for a total height above the general grade of 5 to 7 feet).

⁶ Because the wholesale horticultural nursery use would generate very little noise or traffic, is a relatively innocuous use and would provide screening for the other two proposed uses, the Hearing Examiner does not see any significant benefit in approving only the first phase of this use and requiring all parties to return to the Board of Appeals for what may involve many days of hearings when the Petitioner is ready to open the second and third phases of this use.

⁷ The Petitioner proposed to install the screening during the first planting after the Board of Appeals approves the Special Exception.

7. The only track vehicles used on the property shall be (1) a loader and (2) the vehicles used by the independent contractor to process materials for the Manufacturing of Mulch and Composting Special Exception operations.

8. There shall be no burial or burning of any material on the Subject Property.

9. Any relevant federal, state or county agency shall have the right to inspect any special exception, pursuant to standard procedures for access to the property.

10. The Petitioner shall designate a representative to coordinate with the Community Liaison Committee established in conjunction with these uses. The Community Liaison Committee shall include adjacent and confronting property owners and a representative from the Sugarloaf Citizen=s Association. The People=s Counsel shall be an ex officio member of the Committee. The Committee shall meet four times a year and meetings shall be arranged and noticed by the Petitioner.⁸

11. All required logs shall be made available upon request by the Montgomery County Department of Permitting Services, Montgomery County Department of Environmental Protection, the Maryland Department of the Environment and the Maryland Department of Agriculture during normal business hours. The Petitioner shall distribute copies of required logs to members of the Community Liaison Committee at meetings held pursuant to Condition 10, above. In addition, all logs shall be compiled annually and provided to the Board of Appeals, along with summaries of all Community Liaison Committee meetings for that year.

12. The Petitioner shall install a steel, double-lined 300 gallon tank for #2 diesel fuel. The tank shall be inspected regularly and replaced as needed.

13. The Petitioner shall maintain at least \$1,000,000 in liability insurance from an insurance company rated A or better. A Certificate of Insurance shall be made available upon request.

14. If required by Chapter 22A of the Montgomery County Code, a Final Forest Conservation Plan must be submitted prior to issuance of a Sediment and Erosion Control Permit (if required by the Department of Permitting Services).

15. If required by Chapter 19 of the Montgomery County Code, an approved concept Stormwater Management Plan must be submitted to the M-NCPPC Environmental Staff prior to approval of the Final Forest Conservation Plan and issuance of sedimentation and erosion control permits.

16. Hours of operation for delivery or pick-up related to this use are limited to 7:00 a.m. to 7:00 p.m., Monday through Friday, and 7:30 a.m. to 4:30 p.m. on Saturday.

⁸ The Petitioner proposed to meet only twice a year for 3 years at which time the Committee would disband. The Petitioner also objected to People=s Counsel being an ex officio member of the Committee. The condition recommended by the Hearing Examiner reflects modifications proposed by People=s Counsel.

17. Any person or entity handling, storing or spraying any pesticides or fertilizer must have a Certified Private Applicator Certificate issued by the Maryland Department of Agriculture. Copies of all required notifications regarding application of pesticides and herbicides will be forwarded to the address specified for the Community Liaison Committee established for these special exceptions.

18. No more than two (2) vehicles per day and five (5) vehicles per week may make deliveries to and/or pick-ups from the property, after the initial installation of all plant material, excluding deliveries and/or pick-ups via the vehicles used for the Landscape Contractor Special Exception operation. Only one vehicle per month may be a tractor-trailer, all other vehicles may be no larger than a thirty cubic yard capacity truck.

19. Petitioner shall keep a log of all vehicles, except employees= personal vehicles, entering or leaving the property, that will contain the time of day the vehicle enters and departs the site, the truck type and size, the type of load, the truck number (for Petitioner=s vehicles), as well as the special exception to which the trip is assigned and the entity responsible for the vehicle (e.g., Petitioner, third party contractor, etc.). In addition to company vehicles, the log will record vehicles delivering or picking up materials from the site as well as vehicles used by independent contractors.⁹

20. No more than two (2) employees may be used to maintain the Nursery, excluding the individual members of the Petitioner-LLC and outside contractors used to perform specialized tasks which cannot be performed by the employees dedicated to any of the special exceptions (such as pesticide application, etc.).

⁹ It should be noted that the log required by this recommended condition would contain details, requested by the Opposition, that were not included in the logs proposed by the Petitioner.

21. Equipment to be used for this special exception shall be stored so that the equipment is not visible from the street, in the locations noted on the Special Exception Site Plan. Vehicles to be used and stored on the site will include the following, or similar machinery: (1) a front end loader and (2) a Bobcat with spade attachment (both of which are also used on the farm and/or mulch/composting operation).

22. The existing storage building closest to the north property line shall only be used for farm equipment. When, and if, the building is used for the Wholesale Horticultural Nursery Special Exception operation, the building must be relocated along the same axis; adjusted to meet the setback requirement in the RDT Zone.

Dated: November 5, 2003

Respectfully submitted,

David R. Podolsky, Hearing Examiner

ZONING\TwinPonds-S-2527.dec

BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
TWIN PONDS FARM, LLC

Petitioner

John Hughes
Carl F. Starkey
Jagdish Mandavia
Stephen Tawes
Andrew Der
Philip Perrine
Jeremy Criss
Edward Mulheron
Alan Finneyfrock

For the Petition

Erica Leatham, Esquire

Attorney for Petitioner

*

*

*

*

*

*

*

*

Appeals Case No. S-2528

Board of

(OZA
H Referral
No. 02-35)

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

Chief Roger Strock
David Rotolone
William Butler
Nancy Koerting
Rhody R. Holthaus
Susan Scala-Demby
Peter DiLima
Martin Klauber, People=s Counsel

Neither in Support of nor in Opposition

to the Petition	*	
*****	*	
Stephanie Egly		*
John D. Egly		*
Hagos Gebre	*	
Robert A. Thomassen	*	
Jane S. Hunter, individually and representing	*	
Sugarloaf Citizens Association	*	
Dolores Milmoie, representing	*	
Audubon Naturalists Society and		*
F.A.R.M. (For A Rural Montgomery)	*	
Robert Chapman, representing the Izaak	*	
Walton League		*
Beverly Strauss		*
Terry Cummings		*
Brett Michaels		*
Diane Hogan	*	
James Evans	*	
	*	
In Opposition to the Petition		*
*****	*	

Before: David R. Podolsky, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

I. STATEMENT OF THE CASE

Petition S-2528, filed June 3, 2002, requests a special exception to permit a landscape contractor use on Parcel P400, which is a 77-acre parcel located at 15315 Mt. Nebo Road on the east side of Mt. Nebo Road in the Rural Density Transfer Zone at a location near River Road, southwest of Poolesville. The application was filed jointly with Petition S-2527, which requests a special exception to permit a wholesale horticultural nursery on the subject property, and with Petition S-2529, which requests a special exception to permit a manufacture of mulch and compost use on the site.

By Resolution dated July 31, 2002 and effective September 13, 2002, the Board of Appeals referred the above-captioned matter to the Office of Zoning and Administrative Hearings (OZAH) acting under the provisions of §59-A-4.125 of the Montgomery County Zoning Ordinance. The Board requested the OZAH to schedule and conduct a hearing on the petition and submit a report and recommendation for consideration by the Board. By Resolution adopted June 26, 2002 and effective August 28, 2002, Cases S-2527, S-2528 and S-2529 were consolidated.

The instant petition was initially reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated November 15, 2002 (Exhibit 36), recommended approval of the Petition subject to three general conditions applicable to all three petitions and six conditions applicable to the landscape contractor use.¹⁰ The Planning

¹⁰ The Technical Staff also proposed separate conditions that would be applicable only to the wholesale horticultural nursery use and to the manufacture of mulch and compost use.

Board considered the Petition on November 21, 2002, and, by a 5 to 0 vote, recommended approval of the first phase of each special exception subject to 3 conditions (one of which relates only to the mulch and compost manufacturing use) in addition to the conditions recommended by the Technical Staff (Exhibit 43).

Initially, a hearing was scheduled by the OZAH for October 18, 2002. This hearing was rescheduled to December 13, 2002 to permit the Planning Board to issue its recommendation prior to the commencement of the hearing. At the request of the Opposition, the hearing was rescheduled to February 10, 2003 and was rescheduled again to March 4, 2003. A public hearing was convened by the undersigned Hearing Examiner on March 4, 2003. Subsequent hearings were conducted on March 7, 2003, March 18, 2003, April 4, 2003, April 22, 2003, May 2, 2003, June 20, 2003, July 7, 2003 and September 5, 2003. In addition, at the request of the Opposition, the Hearing Examiner conducted a site visit on May 6, 2003. Various scheduled hearing dates from March to September 2003 were postponed at the request of one or more parties.

During the course of these proceedings, People=s Counsel attempted to mediate disputes between the Petitioner and the Opposition. People=s Counsel reported to the Hearing Examiner that, while he believed that certain issues were subject to resolution, the parties were unable to complete negotiations in face-to-face meetings. The undersigned Hearing Examiner offered the parties the opportunity to participate in voluntary, non-binding, Aoff the record= mediation to determine if the Petitioner and the Opposition could resolve their differences. The parties were advised that they were not required to participate in this process, any agreements reached by some, but not all of the parties, would not be binding on any party that did not wish to be bound and, nothing said or done in the mediation sessions would be considered evidence of record or would be considered in connection with the Hearing Examiner=s Report and Recommendation to the Board of Appeals.¹¹

At the conclusion of the mediation sessions, a status conference was held on August 20, 2003, to determine if, subsequent to the mediation sessions the parties were able to resolve any outstanding issues without the assistance of the mediator. At the status conference, it became clear that, although many issues were being addressed, the parties had irreconcilable differences. The Hearing Examiner requested that the Petitioner prepare revised proposed conditions of approval including those modifications that the parties were able to agree to through the mediation process and to submit those to the Opposition for review. Members of the Opposition agreed to meet with People=s Counsel on August 28, 2003 to review the revised proposed conditions of approval and to advise the Petitioner, on August 29, 2003, of any discrepancies between the revised proposed conditions and the Opposition=s understanding of the agreements reached by the parties, as well as any proposed clarifying language. The Petitioner was then to submit final proposed conditions of approval to the Opposition on September 2, 2003 so that the Opposition could identify any issues that the Opposition believed were not adequately addressed when the Opposition presented closing arguments which were scheduled for September 5, 2003.

¹¹ For a more detailed discussion of the mediation process see Exhibit 140. Mediation sessions took place on July 28, 2003 and July 29, 2003. Although several modifications to the Petitioner=s plan of operations were made and the Petitioner consented to certain conditions of approval regulating the Petitioner=s operations, several parties remain in opposition to the Petition.

On September 5, 2003, a hearing was convened and certain materials that the parties had requested or had agreed to provide prior to the close of the record were submitted. People=s Counsel was unable to attend the September 5, 2003 session and, at his request, closing arguments were rescheduled for October 1, 2003. Closing argument was held on October 1, 2003 and the record was left open until October 7, 2003 for the submission of two documents discussed at the closing argument, to wit: the Petitioner=s final revised proposed conditions of approval and a revised phasing plan. On October 7, 2003, the record was closed.

II. BACKGROUND FACTS

For the convenience of the reader, the background facts are grouped by subject matter. Where there are any conflicts in the evidence, they are resolved under the preponderance of evidence test.

A. The Subject Property

The subject property is a 77-acre parcel located on the east side of Mt. Nebo Road in the Rural Density Transfer Zone at a location near River Road, southwest of Poolesville. The address of the subject property is 15315 Mt. Nebo Road, Poolesville, Maryland. The location of the site is depicted on page 6, *infra*. Of the 77 acres comprising the subject property, the Petitioner initially proposed to use 10.4 acres for the mulch and compost manufacturing operation ¹², 7.8 acres for the nursery operation, and .33 acres for the landscape contractor use. The 58-acre balance of the property would remain in forest or agricultural operations.

The property currently contains one single family dwelling and two storage buildings. The majority of the land remains in agricultural use, open field or with forest cover, and row crop agriculture has been the primary use of the property. The northeast side of the site contains a portion of a small stream that flows east toward Horsepen Branch.

¹² During the course of these proceedings, the Petitioner modified its proposal to reduce the acreage devoted to mulch and composting operations to approximately 3.7 acres.

Access to the property is via two existing gravel driveways. One driveway runs near the northern property boundary to the dwelling and storage buildings. The other driveway extends in an easterly direction from Mt. Nebo Road approximately through the center of the property to the rear (east) section. The subject property is generally level, dropping slightly toward the east. There are two ponds on the property, approximately one-half acre each, located between the southern driveway and the forested area along the northern property boundary. There is a slight ridge at the approximate center of the property, draining to the east and west. The location of the driveways, fields, forested areas and other existing conditions can be seen on the final phasing plan (Exhibit 161(b)), a reduced copy of which is reproduced on page 8, *infra*.

An area containing approximately 3 acres at the east end of the subject property is currently used for the manufacture of mulch and compost for use on the crops raised on the property. The Petitioner asserts that this is a use permitted by right in connection with the continuing farming activity on the property. The Opposition disputes the Petitioner's contentions regarding the existing operations.

The subject property surrounds a parcel containing approximately 6 acres owned by Mr. and Mrs. John D. Egly. Mr. and Mrs. Egly's property contains a home, barn and horse pastures.

B. The Neighborhood and Its Character

The surrounding area is wholly within the agricultural reserve and is rural in nature. Nearby uses include agricultural operations to the north, east and west, and several large lot residential uses to the south. Adjacent properties to the west, east and southeast are heavily wooded. The large lot residential uses to the south include a mixture of open fields and woodland. The size of the parcels, location of buildings and extent of tree cover on nearby properties is depicted on the vicinity map reproduced on page 9, *infra*.

C. Summary of Proposal

As indicated above, the Petitioner proposes to operate a landscape contractor use along with a wholesale horticultural nursery and a mulch and compost manufacturing operation on the subject property. The Petitioner

proposes to lease a portion of the subject property to a related business entity that would operate the landscape contracting business. This business entity is to be managed by one or more of the members of the Petitioner. This use would be operated primarily during the growing season.

Business activities would be concentrated around the area adjacent to the existing home. Prior to implementing this special exception, the house would be converted to use as an office. This area, located in the middle of the property, is more than 1200 feet from Mt. Nebo Road and would be screened from the road and the neighboring properties to the west, south and east. The Petitioner proposes to install screening along the northern property line to screen its use from the currently undeveloped property to the north. According to the Technical Staff Report (Exhibit 36), the closest home (the Eglys= house) is approximately 900 feet from the area in which the landscape contractor use would operate and the next closest home is over 1300 feet from this area.

A Astorage area≡ is located near the north-center of the property, well off of Mt. Nebo Road and behind a stand of trees and the planting areas for the nursery stock. The storage area would be used for business trucks overnight and for the parking of employee cars during the day. In addition, certain equipment, such as snow plow blades, would be stored in this area. The Petitioner has modified its proposal to include the planting of a stand of evergreen trees to the south of the storage area and to provide additional screening along the boundary with the Eglys=s property. Additional storage of materials, equipment and vehicles to service this business would be in the two existing storage buildings near the house on the property. The storage building closest to the northern property line encroaches into the 50-foot setback from that property line and, accordingly, could not be used for the landscape contractor use as currently located. The Petitioner proposes to relocate and expand this building to a 60 by 80 foot building prior to using the building for landscape contractor use. An above-ground diesel tank for the storage of fuel to operate the agricultural and mulching equipment is to be installed near these buildings. The locations of the buildings, fuel tank and equipment storage area are shown on the Phasing Plan reproduced on page 8, *supra*.

The first phase of the landscape contractor business is proposed to involve up to 4 vehicles, each of which would support a Ateam≡ of two employees. As the business grows, the number of Ateams≡ (1 vehicle and 2 employees) is expected to increase to a total of 12.¹³ The landscape contractor operation would use commercial pickup trucks or similar vehicles that do not exceed a maximum of 30 feet in length, with the largest having a roll-off (dump) bed with a 30 cubic yard capacity. Smaller trucks will be less than 5 tons and the larger vehicles would not exceed 13 tons. Sometimes these trucks would pull trailers to transport mowers and similar equipment.

Most vehicle trips associated with this use are planned to occur before and after peak traffic periods. To reach work sites in the early morning, the Petitioner proposed that the work vehicles leave the site at approximately 7:00 a.m. After discussions with the Opposition, the Petitioner agreed that the work vehicles would not leave the site earlier than 7:00 a.m. Thus, employees would arrive between 6:45 and 7:00 a.m. in their personal vehicles, pick up their tools and leave the subject property in the trucks described above between 7:00 and 7:15 a.m. to drive to the job sites. Due to the distance between the employees= residences and the subject property, a certain amount of

¹³ Originally, the Petitioner proposed a total of 15 teams, but agreed to reduce the total number to 12 vehicles and 28 employees (some of whom may be shared with the other uses).

carpooling is anticipated among the employees. Because they would be returning from worksites of varied distances, employees would return to the site over the course of the afternoon and early evening so that the return trips would be spread out over several hours. Saturday hours of operation would be shorter. The Petitioner agreed to a condition of approval that the

Hours of operation are restricted to 7:00 a.m. through 7:00 p.m., Monday through Friday, and 7:30 a.m. through 4:30 p.m. on Saturday; provided that employees may arrive at the property between 6:45 a.m. and 7:00 a.m. Operation of machinery or departures to job sites are not permitted before 7:00 a.m.≡

To aid in enforcing this condition, the Petitioner agreed to keep a log of all company vehicles operating from the property, in the same form as the sample log submitted for the record (Exhibit 150).¹⁴

The access point to the site is from Mt. Nebo Road, a two-lane roadway with a posted speed limit of 25 mph, classified as a Rustic Road. The Petitioner proposes to limit commercial access to a route going north on Mt. Nebo, east on West Offutt and south on West Willard to River Road. Technical Staff recommended that access to the site be restricted to Aleft turn in and right turn out only≡ so that no traffic using this site may use Mt. Nebo Road to the south to and from River Road. This would include the vehicles of the operations on the site, and all of their customers and suppliers. The Petitioner agreed to the restriction recommended by the Technical Staff and to Achannelize≡ access to the primary driveway to prevent the use of Mt. Nebo Road to the south.

The portion of Mt. Nebo Road south of the site to River Road is narrow (approximately 14' to 16') and contains substandard vertical/horizontal curves and two one-lane bridges. River Road, from the Mt. Nebo intersection to West Willard Road is similarly restricted. Under the Petitioner=s proposal, all traffic visiting the site would be prohibited from using this portion of Mt. Nebo Road.

Mt. Nebo Road north of the site is generally approximately 18' wide. West Offutt Road and West Willard Road, also classified as Rustic Roads, are approximately 18' and 24' wide with posted speed limits of 30 mph and 35 mph, respectively. None of these road segments have substandard curves or vehicle weight restrictions.

¹⁴ The Hearing Examiner is recommending that the Petitioner keep a somewhat more detailed log.

The Petitioner agreed to the following additional conditions of approval with respect to the Landscape Contractor use:

18. If required by Chapter 22A of the Montgomery County Code, a Final Forest Conservation Plan must be submitted prior to issuance of a Sediment and Erosion Control Permit (if required by the Department of Permitting Services).
19. If required by Chapter 19 of the Montgomery County Code, an approved concept Stormwater Management Plan must be submitted to the M-NCPPC Environmental Staff prior to approval of the Final Forest Conservation Plan and issuance of sedimentation and erosion control permits.

* * *

- e. This Special Exception is limited to using no more than twelve (12) commercial pick-up trucks, or similar vehicles, a maximum of thirty (30) feet in length weighing less than 26,000 pounds (trailers may be attached to such vehicles), in addition to one tractor-trailer per month to make deliveries. The parking/storage area for the vehicles shall be screened by evergreen trees as reflected on the Site Plan (Exhibit 154).
19. The existing storage building closest to the north property line shall only be used for farm equipment. When, and if, the building is used for the Landscape Contractor Special Exception operation, the building must be relocated along the same axis; adjusted to meet the setback requirement in the RDT Zone.
- g. Petitioner shall install plantings in accordance with the Site Plan (Exhibit 154).
20. Petitioner is limited to no more than twenty-eight (28) employees for this Special Exception, excluding the three individual members of the Petitioner-LLC and outside contractors.
21. Prior to implementation of this Special Exception, the existing residential tenancy of the dwelling unit on the property shall be terminated in order to provide sanitary facilities for the employees of the landscape contractor operation.

Finally, the Petitioner proposed that the following conditions apply to all three cases (S-2527, S-2528 and S-2529).

1. The Petitioner is bound by all submitted statements and plans, as revised.
22. Access to the site for the three Special Exceptions is restricted to left turn ingress from and right turn egress onto Mt. Nebo Road via a channelized island. No special exception-related traffic to and from the site may use Mt. Nebo Road to the south to reach River Road. The Petitioner must inform contractors visiting the site and companies that have delivery activities associated with any of the three uses of this restriction and the Petitioner is responsible for their adherence to this restriction.
23. For the three Special Exceptions, a total of one outside contractor may be on the property per day. Such contractor may have more than one employee to carry out the work on the site.
24. Operations on the site are limited to the following, as shown on the amended Phasing Plan submitted by the Petitioner (Exhibit 161(b)):
 25. Phases 1, 2 and 3 of the Wholesale Nursery operation.
 26. Phases 1, 2 and 3 of the Landscape Contractor operation; however, vehicles associated with the Landscape Contracting operation shall not exceed twelve (12) vehicles stored on-site.
 27. Phase 1 of the Manufacture of Mulch and Composting operation.
28. The Petitioner shall properly maintain the landscaping areas and promptly replace any dead trees.
29. The only track vehicles used on the property shall be (1) a loader and (2) the vehicles used by the independent contractor to process materials for the Manufacturing of Mulch and Composting Special Exception operations (see Condition 15(d))[applicable to S-2529].
30. There shall be no burial or burning of any material on the subject properties of these Special Exceptions.

31. Any relevant federal, state or county agency shall have the right to inspect any Special Exception, pursuant to standard procedures for access to the property.
32. The Petitioner shall designate a representative to coordinate with the Community Liaison Committee established in conjunction with these uses. The Community Liaison Committee shall include adjacent and confronting property owners and a representative from the Sugarloaf Citizens Association. The Committee shall meet twice a year for three (3) years from the date of approval of the Special Exceptions and meetings shall be arranged and noticed by the Petitioner. The People's Counsel shall receive notice of all meetings.
33. All required logs shall be made available upon request by the Montgomery County Department of Permitting Services, Montgomery County Department of Environmental Protection, the Maryland Department of the Environment and the Maryland Department of Agriculture during normal business hours. Petitioner shall distribute copies of required logs to members of the Community Liaison Committee at meetings held pursuant to Condition 9, above. In addition, all logs shall be compiled [sic] annually and provided to the Board of Appeals, along with summaries of all Community Liaison Committee meetings for that year.
34. The Petitioner shall install a steel, double-lined 300 gallon tank for #2 diesel fuel. The tank shall be inspected regularly and replaced as needed.
35. The Petitioner shall maintain at least \$1,000,000 in liability insurance from an insurance company rated A or better. A Certificate of Insurance shall be made available upon request.

III. SUMMARY OF TESTIMONY

The following is a **summary** of the testimony that was presented in connection with Case No. S-2528. It should be noted that some testimony, although primarily related to one of the other two cases (S-2527 or S-2529), may affect the decision in the present case due to the cumulative effects of the three proposed special exceptions as well as the inter-relationship between the three proposed special exceptions. Therefore, testimony relevant to all three cases is described in this Report.

However, because each special exception must stand or fall on its own merits, testimony related solely to one of the other two cases is not repeated in this Report. Also, it should be noted that some testimony presented early in these proceedings was superceded by subsequent modifications to the proposed operations.

John Hughes, a member of the Petitioner, testified regarding the operation of the proposed landscape contractor use. He stated that in the morning the landscape contractor=s employees would drive to the site in their personal vehicles. They would then load company trucks with plant materials, mulch, compost and tools and drive the company trucks to the customers= property. In the afternoon, the employees would bring wood waste and grass from the customers= properties back to the site for composting.

Mr. Hughes stated that the landscape contractor=s employees would install plants, bushes and sod on customers= properties. The landscape contractor use would employ 1 or 2 office workers and approximately 26 landscapers¹⁵. Mr. Hughes testified that the parking area would be screened with evergreen trees and the Petitioner would prefer to screen the subject property from the Eglys= property with the use of evergreen trees rather than a board on board fence as proposed by the Technical Staff. He stated that the Petitioner would start operations with 3 to 5 trucks, but seeks permission to use as many as 12 trucks for its operations. He noted that landscaping is a seasonal operation. The Petitioner also would perform snow removal services using the same trucks. Snow plow blades would be stored along the parking lot when not in use. The Petitioner would use an existing barn and a barn to be relocated for the storage of equipment. Mr. Hughes testified that the noise of the employees= coming to and going from the site would be less than the noise of a combine or tractor used to farm crops.

Mr. Hughes testified that each vehicle used for the landscape contractor use would not exceed 13 tons in gross vehicle weight and a commercial driver=s license is not required to operate these trucks. In response to cross-examination, Mr. Hughes testified that a gate would be installed at the front of the property for security. Mr. Hughes testified that there might be some deliveries of bagged mulch to the site. He agreed that not more than a total of 1 tractor-trailer would visit the site on any day so that if a delivery is made to one of the other two proposed special exception uses, a delivery to the landscape contractor use would not be made on the same day. Also, not more than 1 tractor-trailer per month would visit the site in connection with this use.

¹⁵ As indicated earlier in this Report, the plan of operations was amended during the course of these proceedings. The testimony described in this summary generally reflects the final testimony provided by the Petitioner. For example, initially Mr. Hughes testified that the Petitioner would have up to 30 employees using 15 trucks. Mr. Hughes= testimony near the end of these proceedings stated that this use would involve no more than 28 employees and no more than 12 trucks. Thus, earlier testimony which was subsequently amended, is not reported herein.

Carl F. Starkey, who was recognized as an expert in transportation planning and traffic engineering, testified on behalf of the Petitioner. He stated that he is familiar with the Zoning Ordinance, Adequate Public Facilities Ordinance and Montgomery County road regulations. He described the travel routes and volumes of traffic that travel the roads that would be used by the landscape contractor=s vehicles. He testified that the roads that would be used by these vehicles (Mt. Nebo Road to the north of the site, West Offutt Road and West Willard Road) have low volumes for roads with the capacity of these roads. Accordingly, Mr. Starkey concluded that the proposed use, even in conjunction with the other two proposed special exceptions, would not adversely impact the roadways. He described the volume of traffic generated by the proposed uses as minimal and stated that the Technical Staff concurred with his finding that the volume of traffic generated by the proposed uses would not create any problems.

Mr. Starkey testified that the road network has a capacity for 8,000 trips per day. Currently, there are approximately 200 trips per day on Mt. Nebo and West Offutt Roads. This would increase to approximately 270 trips per day (these calculations assumed 15 teams of 2 employees) if the three proposed special exceptions are granted. Mr. Starkey testified that the roads to be used by the Petitioner have no weight restrictions and more than adequate radii at all intersections. Mr. Starkey stated that all relevant intersections operate at level of service A. He testified that currently, some tractor-trailers use Mt. Nebo Road and West Offutt Road. According to Mr. Starkey, approximately 4% to 11% of the vehicles on these roads are large trucks. He testified that the traffic volume on West Offutt Road is approximately 19 vehicles per hour. This figure represents a total for traffic in both directions. Thus, there is 1 vehicle every 3 minutes in one direction or the other. He testified that the roads meet geometric design criteria for low volume roads.

Mr. Starkey testified that the entrance to the subject property would be channelized so that vehicles would be required to make a right turn when exiting the property and would have to enter the property by making a left turn from southbound Mt. Nebo Road. According to Mr. Starkey, the channel is designed to County standards and would effectively prevent truck traffic from using Mt. Nebo Road to the south of the subject site.

Jagdish Mandavia, an expert in civil engineering, testified on behalf of the Petitioner. Almost all of his testimony related to the mulch and composting use. He stated that the Petitioner=s operations would not create a nuisance.

Stephen Tawes testified as an expert in landscape architecture and site planning. He described the site plan submitted by the Petitioner. Mr. Tawes testified that agricultural uses surround the property which is in the RDT Zone. He stated that the proposed uses would operate at the same scale of activity as surrounding uses. According to Mr. Tawes, the three proposed uses have been sited to minimize their impact on the neighborhood. He does not believe that the proposed use would have any non-inherent impacts. Mr. Tawes emphasized that all parking for the proposed uses would be on site and would be screened from Mt. Nebo Road and from the Eglys= property. He noted that all three uses would be operated at least 50 feet from any property line. Mr. Tawes stated that he has spent 6 hours on the site over the course of 3 visits during the summer and fall. He stated that the parking spaces are sized to comply with County Code, and that the parking area is already present.

Andrew Der testified that he prepared an environmental impact analysis. Most of his testimony related to the mulch and compost production use. However, he testified that the Petitioner will provide a 100-foot buffer around all streams and that the site is not hydrologically connected to the

surrounding area. He testified that distances and existing vegetation provide adequate sound buffering for all three uses.

Philip Perrine, a land use planning expert, testified on behalf of the Petitioner. He stated that he has visited the site and driven around the area. He reported that the area is designated for agricultural and open space uses under the Master Plan. He described the relevant neighborhood and stated that it contains agricultural and related uses, large open tracts of farmland, some residences on large tracts to the south along Mt. Nebo Road, and the Izaak Walton League property to the east that is used for recreational purposes. He described the area as agricultural in nature and noted that the site is in the RDT Zone. Mr. Perrine testified that all three proposed uses are permitted as special exceptions in the RDT Zone. Mr. Perrine summarized his understanding of the proposed landscape contractor use and testified that it would have no non-inherent impacts on the road system or the neighborhood. In his opinion, the proposed use is compatible with the surrounding area. He testified that, prior to 1985, the three special exceptions requested by the Petitioner were treated as one unified special exception use. According to Mr. Perrine, the three proposed special exceptions are typically grouped together. He noted that the Zoning Ordinance requires a lenient application of the standards for special exceptions in an agricultural area. He disputed the Opposition's contention that the neighborhood is a Aone-family≡ residential area.

Beverly Strauss, a realtor who lives on Westerly Avenue in Poolesville, testified in opposition. She believes that property values will drop as a result of the proposed special exceptions. She is concerned that the traffic generated by the proposed use would create noise and that people run stop signs. In response to questioning, she acknowledged that she is not familiar with the amount of traffic that would be generated by the proposed use and that she has not reviewed the file or listened to the testimony in these cases. She testified that the proposed special exception would have the same effect anywhere in the RDT Zone and, accordingly, does not believe that this use should be permitted in the RDT Zone.

Terry Cummings, of 15200 Mt. Nebo Road, testified that she lives across Mt. Nebo Road from the site on a 430-acre parcel of land upon which she operates an animal sanctuary. She testified that she is concerned regarding truck traffic on Mt. Nebo Road. Ms. Cummings stated that school busses frequently visit her property so that children can interact with the animals at the sanctuary. She is concerned that the school busses and the Petitioner's trucks may have difficulty passing each other in opposite directions. Ms. Cummings testified that normally 4 or 5 school busses and 8 other vehicles visit the animal sanctuary each day. Typically, visitors are at the animal sanctuary between 10 a.m. and 2 p.m. to visit the farm animals. Ms. Cummings has had as many as 1,000 visitors on AFarm Day.≡ The animal sanctuary operates fund raisers in September that involve about 900 visitors between the hours of 1:00 p.m. and 4:00 p.m. The animal sanctuary is open 7 days per week. Animals are delivered to the animal sanctuary on trucks and trailers. On cross-examination, Ms. Cummings testified that she is not aware of any conflicts between busses and trucks occurring during the year preceding her testimony.

Hagos Gebre, of 14929 Mt. Nebo Road, testified that he works in the District of Columbia and used to live there as well. He moved to the Poolesville area to have a quiet environment. In the past several months Mr. Gebre has noticed several more trucks on Mt. Nebo Road. He believes this is changing the character of the neighborhood. Mr. Gebre is concerned about the possible impact of the proposed activities on property values. He was not able to identify any non-inherent effects of the proposed use.

Robert A. Thomassen, of 15001 Mt. Nebo Road, whose property adjoins the subject property, testified that he is concerned with increased traffic on Mt. Nebo Road and the noise that may be generated by the trucks using the gravel road on the Petitioner=s property. He pointed out that some of the trees that would screen the Petitioner=s property from the Thomassens= property are located on the Thomassens= property. Most of Mr. Thomassen=s testimony related to the mulch and compost manufacturing use requested in Case S-2529.

John D. Egly, of 15115 Mt. Nebo Road, testified in opposition. Although most of his testimony related to the mulching and composting operation, he stated that in his opinion, the neighborhood is a rural residential area and that there are no Afarms≡ in the area. Mr. Egly believes that the proposed channelization of the driveway entrance would change the vista along Mt. Nebo Road.

Brett Michaels, of 14920 Mt. Nebo Road, testified that he is concerned regarding the noise that the proposed uses may generate. He stated that he is aware of a case in which Mr. Hughes told a truck driver not to drive south on Mt. Nebo Road, but the driver drove in that direction anyway. He believes that the proposed channelization would help the situation, but that some trucks may use Mt. Nebo Road to the south despite the Petitioner=s efforts. Mr. Michaels believes that all three special exceptions are inconsistent with the agricultural preserve and allowing them in the RDT Zone would affect property values.

Dolores Milmoie testified on behalf of the Audubon Naturalists Society and AFor A Rural Montgomery≡ (F.A.R.M.). Although most of Ms. Milmoie=s testimony related to the proposed mulch and composting operation, she testified that Mt. Nebo and West Offutt Roads are rustic roads that she believes are not adequate for truck traffic.

Stephanie Egly, of 15115 Mt. Nebo Road, testified in opposition. Ms. Egly presented a video tape (Exhibit No. 104) showing conditions along West Willard Road, West Offutt Road and Mt. Nebo Road. The video tape revealed Ms. Egly=s vehicle passing a truck going in the opposite direction on West Willard Road. Ms. Egly testified that West Willard Road has a 35 mile per hour speed limit and West Offutt Road has a 30 mile per hour speed limit. She testified that the paved surface of West Offutt Road narrows to 15 feet at one bridge, 14 feet at another bridge and 13 feet 10 inches at another spot. She stated that the speed limit on Mt. Nebo Road is 25 miles per hour and that Mt. Nebo Road narrows to as little as 11 feet 5 inches in width at one point south of the site. The video tape showed Ms. Egly=s vehicle passing a car going in the opposite direction without slowing down. Ms. Egly testified that there are a lot of school busses on West Offutt and Mt. Nebo Roads. Ms. Egly acknowledged that her vehicle passed (in the opposite direction) 4 or 5 cars during the 20-minute video. She acknowledged that school busses and cars currently meet each other from opposite directions and are able to pass. She stated that the major issue is the speed of the trucks.

Diane Hogan, of 15001 Mt. Nebo Road, testified that she owns and resides on a property adjacent to the subject property. Ms. Hogan expressed concern regarding Case S-2528 relating to the noise of trucks driving over the gravel driveway.

In rebuttal, Mr. Perrine testified that almost all roads in the agricultural preserve are rustic. Therefore, almost any special exception use in the RDT Zone must use rustic roads for access. According to Mr. Perrine, this renders the use of rustic roads an inherent aspect of any use that is allowed by special exception in the RDT Zone. He testified that the area is agricultural - not residential in nature because residential lots comprise approximately 5% of the surrounding area. He noted that the zone requires that residential lots have at least 25 acres per parcel, although smaller lots have been Agrandfathered.≡ He acknowledged that all 8 residential lots to the south of the site

along Mt. Nebo Road are smaller than 25 acres. Mr. Perrine stated that the area is not residential according to the Master Plan, which describes the area as agricultural. He noted that the Izaak Walton League property to the east of the subject property contains 493 acres and is a working conservation farm. Mr. Perrine drew a distinction between the RDT Zone which expresses a preference for agricultural uses and other rural zones which allow 1 house per 5 acres. According to Mr. Perrine, this distinction means that in the RDT Zone, the residential uses must be compatible with the agricultural uses, whereas in the rural residential zones, the agricultural uses must be compatible with the residential uses. Mr. Perrine also testified that the Arustic roads designation is not intended to affect the use of abutting properties.

Mr. Starkey testified in rebuttal that school busses are currently safely negotiating the route that would be followed by the Petitioner's trucks. He viewed the narrow areas described by Ms. Egly in her testimony and stated that within 160 feet of each narrow area there is a spot that provides at least 22 feet of clear surface without a 2-foot dropoff. Therefore, although a vehicle might have to slow or stop to allow a vehicle in the opposite direction to pass at the narrowest areas of the road, he believes that this can be accomplished safely.

Jane Hunter, of 20400 West Hunter Road, Beallsville, Maryland, testified individually and on behalf of the Sugarloaf Citizens Association. Although most of her testimony related to Case No. S-2529, she expressed concern regarding noise generated by the proposed landscape contractor operations. She testified that the trucks used in connection with the proposed operation would generate noises that differ from the existing country sounds generated by the wind and birds. She acknowledged that there is little traffic on area roadways, but stated that the ample capacity encourages speeding. She believes that the proposed use would be better located in an industrial area where there are more suitable roads. Ms. Hunter expressed concern regarding the enforceability of a condition of approval requiring that the use-related traffic not use Mt. Nebo Road to the south of the site. Ms. Hunter stated that, based on the past history of the Petitioner, she doubts that the Petitioner will enforce any routing requirements. In Ms. Hunter's opinion, although there is road capacity for the trips generated by the proposed uses, this volume of trips would change the character of the neighborhood. She believes that the weight of the trucks that would be used would damage the roads, which she stated were not designed for daily truck traffic. According to Ms. Hunter the roads will be reduced to rubble. She asserted that the roads to be used by the Petitioner's vehicles are on the Bicycle Master Plan.

Several residents of the area submitted letters in opposition but did not testify. The Cabin John Citizen's Association supported the Petition. In assessing the credibility of the testimony, it should be noted that, while the Opposition raised many serious concerns and presented significant evidence, many of the Opposition's allegations were not supported by a preponderance of the evidence of record. For example, the Opposition asserted that the Petitioner's current operations do not comply with laws or regulations in numerous ways. However, Exhibit 158, submitted by the Opposition, reveals that, upon investigation, most allegations of non-compliance were deemed to be unfounded.

IV. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided pre-set legislative standards are met. The special exception is evaluated in a site-specific context because there may

be locations where it is not appropriate. Nevertheless, a special exception use is deemed compatible within the zoning district in which it is authorized unless specific adverse conditions at the proposed location are shown to overcome this presumption. Impacts which are inherent in the special exception use, regardless of where it is located within the zoning district, may not be the sole basis for denial of a special exception.

Further, Section 59-G-2.30.00 which establishes standards for landscape contractor uses states:

- (6) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones.

The proposed use is considered an agricultural-commercial special exception under the Zoning Ordinance. Section 59-C-9.3 (c).

A. Standard for Evaluation

Sec. 59-G-1.2.1. Standard for evaluation.

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

Analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic and environmental effects. It is understood that every special exception has some or all of these effects in varying degrees. What must be determined during the course of review is whether these effects are acceptable or will create adverse impacts sufficient to result in a denial. To that end, inherent adverse effects associated with the use must be determined. The general neighborhood affected by the proposed use is predominantly rural with a mixture of agricultural and one-family residential uses. The immediate neighborhood contains large lot residential uses to the south and predominantly agricultural or open space uses to the west, north and east.

The inherent, generic physical and operational characteristics arising from the given use, in this case a landscape contractor, include temporary storage of landscaping materials to be taken by crews to work sites, storage of business vehicles and equipment, storage buildings and an office. These inherent characteristics have been accepted by the Board of Appeals in prior cases (e.g. S-2506).

As noted by the Technical Staff, a landscape contractor operation can vary considerably in size and intensity. This business inherently uses trucks (of variable sizes) to move equipment and products from where they are stored to where the work is performed. The use usually has stores of products (such as mulch or compost) that it delivers to work sites, and the same vehicles take organic debris from the work

sites to places where that debris is recycled into compost or otherwise disposed of in a landfill. This use usually requires that the employees must arrive very early in the morning to get the trucks and equipment out to job sites early in the morning. This characteristic is compounded by the fact that most landscape contractors choose sites in rural areas (as encouraged by the Zoning Ordinance) to avoid the greater disruptions that would occur in more densely settled residential areas. The farther this use is located from the jobsites in residential or business areas, the earlier the employees must leave the business location in the morning.

The Technical Staff did not identify any non-inherent effects and found that the inherent effects would be less than if the use were located in a more densely populated residential area. The Technical Staff concluded that the operations as initially proposed by the Petition, subject to certain conditions of approval, would cause no detrimental impacts to the surrounding area (Exhibit 36 at 14).

All of the special exception activities proposed by the Petitioner are arranged on the site in a logical manner and are 50 feet or more from all property lines. The special exception site plan for the proposal (Exhibit 154) identifies where activities would occur on the site.

A proliferation of trucks and other vehicles can render a generic aspect of the use, business vehicles, non-inherent. The zoning ordinance specifically requires that the number of vehicles be identified and limited by the special exception. While this requirement does burden a petitioner with needing to seek a modification when the petitioner's fleet is changed, it protects the character of the neighborhood from uncharacteristic groupings of business vehicles. In the present case the number of vehicles would be limited to 12 vehicles by proposed condition number 18.

The volume of traffic can present a non-inherent adverse effect. While increased volumes of traffic can occur in commercial and industrial areas with little impact, in a zone that includes residential uses, the timing and frequency can be of significant concern. In this case, the timing of arrivals and departures of business vehicles has been limited by a proposed condition of approval to the period between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and between 7:30 a.m. and 4:30 p.m. on Saturdays, with no operations on Sunday. This serves to protect the neighborhood from disturbance during late evening or very early morning hours. Based on the volume of traffic anticipated, the effects of traffic would be typical for a landscape contractor and, therefore, inherent. The area road system would continue to operate efficiently with intersections at level of service A.

The Opposition asserts that the use of Mt. Nebo Road, which is a Rustic Road, by the landscape contractor's trucks is a non-inherent characteristic. However, as indicated above, a certain amount of traffic, including truck traffic, is inherent in the use. The Petitioner agreed to limit the number of employees (28) and trucks (12) associated with this use. Also, the Petitioner agreed to channelize the entrance to the site so that ingress and egress would be left turn in, right turn out only, so as to prevent the use of Mt. Nebo Road to the south of the site. This would keep truck traffic off the section of Mt. Nebo Road that traverses the portion of the neighborhood where most residences are located as well as the section where visibility is most obscured by hills and turns.

While some parcels in the RDT Zone abut or are near higher grade roadways, much of the RDT is served by roads similar to Mt. Nebo Road and West Offutt Road. Thus, the use of such roads cannot be considered non-inherent. If operated in accordance with the Statement of Operations (Exhibit 152) and the conditions of approval proposed by the Petitioner, as modified by the Hearing Examiner, the use would have no non-inherent impacts and the inherent impacts would be sufficiently mitigated to supporting granting the petition.

Technical Staff concluded that there are no non-inherent adverse effects associated with the Petition that warrant denial. Technical Staff found that, subject to the proposed conditions of approval (which have been enhanced since the date of the Technical Staff report to further protect the neighborhood), all of the physical and operational characteristics of the proposed use would be inherent. The undersigned concurs with the Technical Staff's findings.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a).

Sec. 59-G-1.21. General conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

The proposed use is permitted by special exception in the Rural Density Transfer Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The proposed use, as limited by the Statement of Operations and recommended conditions of approval, complies with the standards and requirements for the use in Division 59-G-2 as is discussed in more detail on pages 33 through 35, infra.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the

Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

As found by the Technical Staff, the Planning Board and Mr. Perrine, the proposed uses are consistent with the Master Plan for the Preservation of Agricultural and Rural Open Space, as they are specifically noted as Agricultural-Commercial uses in the zoning ordinance, and therefore appropriate, with the recommended limits on the uses, in the Rural Density Transfer Zone (see Exhibit 36, at page 16).

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

The Technical Staff found that the proposed use, as limited by the Petitioner and by staff recommendations, would be in harmony with the general character of the rural area. The proposed use would not increase the population and the only new structure would be the enlargement and slight relocation of an existing barn that would be far removed from any existing residences in the neighborhood. Although, as the Opposition asserts, there are some residences to the south of the site along Mt. Nebo Road, the general character of the neighborhood is rural and the majority of the acreage is devoted to agricultural or open space uses. By implementing measures to assure that traffic to and from the site does not use Mt. Nebo Road south of the site, the impact of the proposed use on the residential portion of the neighborhood is significantly mitigated. The limited hours during which traffic would arrive at or depart from the site as well as the limitations of the number of vehicles and employees would avoid any material change to the character of the neighborhood resulting from traffic. The on-site activities of the proposed use would be located several hundred feet from the nearest public road (Mt. Nebo Road) and 900 feet from the nearest residence. The on-site activities associated with the use would be amply screened from both Mt. Nebo Road and neighborhood residences.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use, as limited by the Petitioner's Statement of Operations (Exhibit 152) and the recommended conditions of approval, would not be detrimental to this rural area. As discussed above, the use would not have any non-inherent impacts. Other than a small amount of traffic, most neighbors would not notice the presence of the use. Despite the large distance between the Egly's house and the storage/parking areas for the proposed use, the Egly's may be aware of some activity on the site. However, the screening proposed by the Petitioner to the south of the parking area and along the Egly's property line, as well as the recommended conditions of approval, would ameliorate the effects of the use to the extent that the use would not be a material detriment to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use, as limited by the Petitioner's Statement of Operations and by the recommended conditions of approval, would not cause objectionable noise, vibrations, fumes, odors, dust or other impacts. As Technical Staff found, the potential for impact is limited by the large size of the property, the operation plan, and the specific limitations and modifications agreed to by the Petitioner.

While the Opposition understandably objects to any new noise or other impacts, the effects of the proposed use would be minimal. The inherent noise of car and truck doors and engines would be substantially diluted by the distance of the parking area from any other property. If the Petitioner had sited its storage and parking area 50 feet from the Egly's property line, the noise impact could be significant. However, the parking area is several hundred feet from the Egly's house with substantial screening in between. There is no evidence that the landscape contractor use would generate any noticeable fumes or odors nor is there any evidence the use would cause objectionable illumination or glare.

The Opposition expressed concern regarding noise, vibrations and dust that might be generated by trucks using the gravel driveway on the site. In response, the Petitioner agreed to maintain the driveway and to abide by a dust suppression plan. These measures combined with the distance of the driveway from abutting properties, the limits on the number and size of vehicles, the limited hours of operation and other restrictions on the use would prevent a material amount of objectively objectionable noise, vibrations or dust from impacting nearby properties.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

As the Technical Staff and Mr. Perrine properly concluded, the proposed use is not located in a one-family residential area. The proposed special exception use is consistent with the recommendations of the Master Plan. The evidence does not reveal the existence of any other special exceptions in the neighborhood.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

For the reasons discussed in greater detail above and below, the Technical Staff and Mr. Perrine correctly concluded that the proposed use would not adversely affect the health, safety, security, morals, or general welfare of residents, visitors or workers in the area, irrespective of any adverse effects the use might have if established elsewhere in the zone.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

The proposed use would not require any public school facilities. This use, would not require any additional police or fire protection or storm drainage. The Opposition expressed concern regarding the adequacy of water and sanitary facilities on site to serve the employees. However, the Petitioner submitted correspondence from Harry Sandberg of the Montgomery County Department of Permitting Services (Exhibit 149) stating that:

The septic system currently serving the on-site single family residence is adequate to serve 30 persons as proposed by Mr. Hughes on a strictly commercial basis.

The evidence reveals that while the proposed use would generate noticeable additional traffic on Mt. Nebo Road and West Offutt Road, the reason the traffic to and from the use would be noticeable is because there is currently very little traffic on these roads. Even combined with the traffic that would be generated by the uses proposed in S-2527 and S-2529, all intersections in the area would operate at level of service A. By prohibiting special exception traffic south of the site on Mt. Nebo Road,

the Petitioner would avoid those sections of Mt. Nebo Road where improvements to the public road might be necessary to handle the special exception traffic.

The Opposition asserts that Mt. Nebo Road north of the site and West Offutt Road are inadequate to accommodate the traffic that would be present if the special exception is granted. It is undisputed that these roads are rural in character with limited or, in some areas, no shoulder space. Thus, large vehicles must use care when passing other large vehicles heading in the other direction. However, the pickup trucks and any other trucks not exceeding 30 feet in length or 13 tons in weight would be able to safely pass the few other vehicles they may encounter on their way to or from the site. Eighteen-wheel tractor-trailers present a greater concern. However, the Petitioner has agreed to a condition of approval that only one such truck per month may visit the site in connection with the landscape contractor use and that such a visit will not occur on the same day as a tractor-trailer visits the site for one of the other uses.

It must be noted that, currently, refuse collection trucks and delivery trucks regularly use West Offutt Road and Mt. Nebo Road. The testimony of Terry Cummings was particularly helpful in evaluating this issue. Ms. Cummings operates an animal sanctuary located directly across Mt. Nebo Road from the Subject Property. Ms. Cummings testified that the sanctuary holds open houses that involve 900 to 1000 visitors on certain days and is frequently a field trip destination for school classes. According to Ms. Cummings, 4 or 5 school busses per day visit the sanctuary. It is apparent that sometimes an arriving or departing school bus must pass by another bus or a truck on Mt. Nebo Road or West Offutt Road. Ms. Cummings is not aware of any collisions or other similar incidents involving school busses visiting or departing the sanctuary. Moreover, the school bus arrivals and departures which occur between 10:00 a.m. and 2:00 p.m. are at least as likely to conflict with truck traffic making deliveries to and collections from area farms or residences as would the Petitioner's vehicles which would leave the site shortly after 7:00 a.m. Further, the Petitioner's vehicles would not be on the local roads at the same time of day as the school busses visiting the animal sanctuary.

Finally, although Mt. Nebo Road is a Rustic Road, the designation of Rustic Road status is not to be used to limit otherwise permitted land uses. Page 5 of the Rustic Roads Master Plan states: AThe rustic roads designation is not intended to affect the use of adjoining land except in the design of access to subdivision. Further, the area of Mt. Nebo Road of primary interest in the Rustic Road Master Plan description is the southern end, where truck traffic is to be prohibited. The Plan states: AThe northern half (of Mt. Nebo) is generally flat with long, straight

sections.≡ The site is located in the rural policy area, where the County's roadway design standards do not include pedestrian facilities due to the relatively low level of pedestrian activity and inconsistency with rural character. The proposed uses are not expected to generate pedestrian activity along public roadways.

Although this issue is in greater dispute than some others, the undersigned agrees with Technical Staff that the proposed use would be served by adequate public services and facilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

The proposed special exception does not require approval of a preliminary plan of subdivision. Also, according to Technical Staff, the proposed special exception does not require approval of a preliminary plan of subdivision. The proposed use meets Local Area Transportation Review and the Policy Area Transportation Review requirements.

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The proposed use, as limited by the Statement of Operations and recommended conditions of approval, would not have a material detrimental effect on the safety of vehicular or pedestrian traffic. Although even one additional car or truck can have some effect, for the reasons discussed in detail above, the effects of the proposed use would be minimal and would not materially affect the safety of vehicular or pedestrian traffic.

C. Specific Standards

Sec. 59-G-2.30.00. Landscape contractor.

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a wholesale or retail horticultural nursery, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board opinion must specify which combination of uses is approved for the specified location.

- (1) The minimum area of the lot must be 2 acres if there are any on-site operations, including parking or loading of trucks or equipment.

The proposed use is on a parcel of land containing approximately 77 acres.

- (2) Areas for parking and loading of trucks and equipment as well as other on site operations must be located a minimum of 50 feet from any property line. Adequate screening and buffering to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.

The area designated for parking trucks and equipment is approximately 200 feet from the nearest property line, and several hundred feet from the nearest off-site house. Although Technical Staff concluded that the distance above is sufficient protection for adjoining properties, Staff recommended a fence along the Egly property line to provide some further protection from the noise of vehicles starting and leaving in the early morning hours. The Petitioner has agreed to install plantings along the currently unscreened portion of the common property line with the Eglys and to install evergreen trees on the south side of the portion of the driveway that is adjacent to the parking area.

The Petitioner proposes to use existing storage barns for storing equipment and supplies. One of the existing barns does not currently meet the setback requirement. The Petitioner has agreed to a condition of approval that this structure must be moved to meet the setback requirement before it can be used for the special exception use. All of the other existing structures meet the required setbacks.

- (3) The number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on site must be limited by the Board so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles and trailers permitted.

The Petitioner currently has trucks arriving at the site daily as part of the farming operation, dropping off organic debris (chipped trees and greenery) and leaving empty. If the proposed use is approved, many of the same trucks would be parked at the site, leave the site with loads of mulch, and return with the organic debris.

The Petitioner originally proposed up to 15 trucks in conjunction with the landscape contracting business. The Petitioner has agreed to a limit of 12 commercial vehicles which would be pickup trucks or similar vehicles (as models change) a maximum of 30 feet in length, the largest with a dump bed with a 30 cubic yard capacity. The smaller trucks would be less than 5 tons and the larger vehicles would not exceed 13 tons.

The proposed site for parking the vehicles and equipment is adequate in size. With the addition of evergreen plantings on the south side of the driveway, directly across the driveway from the parking area, and the proposed screening along the Eglys=property line, the properties to the south would be adequately buffered from the view and noise of the equipment and vehicles.

- (4) No sale of plant materials or garden supplies or equipment is permitted unless the contracting business is operated in conjunction with a retail or wholesale nursery or greenhouse.

The Petitioner is proposing a separate special exception for a wholesale horticultural nursery operation. (S-2527)

- (5) The Board may regulate hours of operation and other on-site operations so as to prevent adverse impact on adjoining uses.

Although the Technical Staff and Planning Board originally found the proposed hours of operation of 6:00 a.m. to 8:00 p.m. acceptable, the Petitioner has agreed to restrict the hours of operation to 7:00 a.m. to 7:00 p.m. on weekdays and 7:30 a.m. to 4:30 p.m. on Saturdays. No Sunday hours are proposed. Also, the Petitioner has agreed to limit the number of employees and other aspects of the proposed use. See page 13, supra, and the Statement of Operations (Exhibit 152).

- (6) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones.

The proposed use is categorized as an Agricultural-commercial use (Section 59-C-9.3(c)), and given the size and scale proposed, the Technical Staff correctly concluded that the landscape contractor use is appropriate in the Rural Density Transfer Zone, which is an agricultural zone (Section 59-C-9.1). As stated earlier in this Report, although there are residences in the neighborhood, these residences are primarily south of the Subject Property, comprise a minority of the acreage in the general neighborhood, most about the portion of Mt. Nebo Road that would not be used by traffic visiting the site, are generally Aupwind (using the prevailing wind pattern) of the site, and except for the Egly and Thomassen properties, do not adjoin the site.

59-G-1.22. Additional requirements.

- (a) The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.

In order to protect nearby properties and the general neighborhood, the Petitioner should be required to comply with all of the conditions of approval as set forth under Section V. Recommendations, below.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions, I recommend that Petition No. S-2528, for a special exception under the Rural Density Transfer Zone for a landscape contractor use, on property known as Parcel P400, which is a 77-acre parcel located at 15315 Mt. Nebo Road on the east

side of Mt. Nebo Road at a location near River Road, southwest of Poolesville, Maryland, be approved subject to the following conditions:

1. The Petitioner is bound by all of the Petitioner=s testimony and exhibits of record and is bound by the testimony of the Petitioner=s witnesses and attorneys= representations, to the extent that the evidence and representations are identified in this report and recommendation (Section 59-A-4.127).
2. The Petitioner is bound by all submitted statements and plans, as revised.
3. Access to the site for the three special exceptions is restricted to left turn ingress from and right turn egress onto Mt. Nebo Road via a channelized island. No special exception-related traffic to and from the site may use Mt. Nebo Road to the south to reach River Road. The Petitioner must inform contractors visiting the site and companies that have delivery activities associated with any of the three uses of this restriction and the Petitioner is responsible for their adherence to this restriction.
4. For the three special exceptions, a total of one outside contractor may be on the property per day. Such contractor may have more than one employee to carry out the work on the site.
5. Operations on the site are limited to the following, as shown on the amended Phasing Plan submitted by the Petitioner (Exhibit 161(b)):
 5. Phases 1, 2 and 3 of the Wholesale Nursery operation.
 6. Phases 1, 2 and 3 of the Landscape Contractor operation; however, vehicles associated with the Landscape Contracting operation shall not exceed twelve (12) vehicles stored on-site.¹⁶
 7. Phase 1 of the Manufacture of Mulch and Composting operation.

6. The Petitioner shall install the landscaping described on the Revised Site Plan (Exhibit 154) prior to commencement of operations¹⁷ and shall properly maintain these landscaped areas and promptly replace any dead trees. A majority of the trees for screening along the boundary line with the Thomassen property shall be Thuja AGreen Giant≡ evergreens. At the time of installation, all buffer trees shall be at least 5 feet in height above the top of the proposed 2 foot to 3 foot berm (for a total height above the general grade of 7 to 8 feet.

¹⁶ The Technical Staff and Planning Board recommended limiting the initial approval of this use to 10 trucks and giving the Petitioner the opportunity to request a modification to increase the number of trucks to 15 (see Exhibit 36 at page 15 and Exhibit 43). Because the Petitioner has agreed to delete phases 2 and 3 of the proposed Manufacture of Mulch and Composting use, and has agreed to numerous restrictions on the proposed Landscape Contractor use (including but not limited to reducing the number of vehicles and employees), the Hearing Examiner does not see any significant benefit in approving only one phase of this proposed use and requiring all parties to return to the Board of Appeals for what may involve many days of hearings when the Petitioner is ready to expand to 12 vehicles for this use. There is no evidence to support the conclusion that an increase from 10 vehicles to 12 vehicles would impact the neighborhood in a way that would justify restricting the Petitioner to only 10 vehicles for this use and imposing upon all parties the time and expense of further hearings for only 2 additional vehicles.

¹⁷ The Petitioner proposed to install the screening during the first planting after the Board of Appeals approves the special exception.

7. The only track vehicles used on the property shall be (1) a loader and (2) the vehicles used by the independent contractor to process materials for the Manufacturing of Mulch and Composting Special Exception operations.

8. There shall be no burial or burning of any material on the Subject Property.

9. Any relevant federal, state or county agency shall have the right to inspect any special exception, pursuant to standard procedures for access to the property.

10. The Petitioner shall designate a representative to coordinate with the Community Liaison Committee established in conjunction with these uses. The Community Liaison Committee shall include adjacent and confronting property owners and a representative from the Sugarloaf Citizen=s Association. The People=s Counsel shall be an ex officio member of the Committee. The Committee shall meet four time a year and meetings shall be arranged and noticed by the Petitioner.¹⁸

11. All required logs shall be made available upon request by the Montgomery County Department of Permitting Services, Montgomery County Department of Environmental Protection, the Maryland Department of the Environment and the Maryland Department of Agriculture during normal business hours. The Petitioner shall distribute copies of required logs to members of the Community Liaison Committee at meetings held pursuant to Condition 10, above. In addition, all logs shall be compiled annually and provided to the Board of Appeals, along with summaries of all Community Liaison Committee meetings for that year.

12. The Petitioner shall install a steel, double-lined 300 gallon tank for #2 diesel fuel. The tank shall be inspected regularly and replaced as needed.

13. The Petitioner shall maintain at least \$1,000,000 in liability insurance from an insurance company rated A or better. A Certificate of Insurance shall be made available upon request.

14. If required by Chapter 22A of the Montgomery County Code, a Final Forest Conservation Plan must be submitted prior to issuance of a Sediment and Erosion Control Permit (if required by the Department of Permitting Services).

¹⁸ The Petitioner proposed to meet only twice a year for 3 years at which time the Committee would disband. The Petitioner also objected to People=s Counsel being an ex officio member of the Committee. The condition recommended by the Hearing Examiner reflects modifications proposed by People=s Counsel.

15. If required by Chapter 19 of the Montgomery County Code, an approved concept Stormwater Management Plan must be submitted to the M-NCPPC Environmental Staff prior to approval of the Final Forest Conservation Plan and issuance of sedimentation and erosion control permits.

16. Hours of operation are restricted to 7:00 a.m. through 7:00 p.m., Monday through Friday, and 7:30 a.m. through 4:30 p.m. on Saturday; provided that employees may arrive at the property between 6:45 a.m. and 7:00 a.m. Operation of machinery or departures to job sites are not permitted before 7:00 a.m.

17. Petitioner shall keep a log of all vehicles, except employees' personal vehicles, entering or leaving the property, that will contain the time of day the vehicle enters and departs the site, the truck type and size, the type of load, the truck number (for Petitioner's vehicles), as well as the special exception to which the trip is assigned and the entity responsible for the vehicle (e.g., Petitioner, third party contractor, etc.). In addition to company vehicles, the log will record vehicles delivering or picking up materials from the site as well as vehicles used by independent contractors.¹⁹

18. This special exception is limited to using no more than twelve (12) commercial pick-up trucks, or similar vehicles, a maximum of thirty (30) feet in length weighing less than 26,000 pounds (trailers may be attached to such vehicles), in addition to one tractor-trailer per month to make deliveries. Any tractor-trailer visiting the site in connection with this use may not visit the site on the same day as a tractor-trailer visits the site in connection with either of the other special exceptions. The parking/storage area for the vehicles shall be screened by evergreen trees as reflected on the Site Plan (Exhibit 154).

¹⁹ It should be noted that the log required by this recommended condition would contain details, requested by the Opposition, that were not included in the logs proposed by the Petitioner.

19. The existing storage building closest to the north property line shall only be used for farm equipment. When, and if, the building is used for the Landscape Contractor Special Exception operation, the building must be relocated along the same axis; adjusted to meet the setback requirement in the RDT Zone.

20. Petitioner shall install plantings in accordance in accordance with the Site Plan (Exhibit 154).

21. Petitioner is limited to no more than twenty-eight (28) employees for this special exception, excluding the three individual members of the Petitioner-LLC and outside contractors.

22. Prior to implementation of this special exception, the existing residential tenancy of the dwelling unit on the property shall be terminated in order to provide sanitary facilities for the employees of the landscape contractor operation.

Dated: November 5, 2003

Respectfully submitted,

David R. Podolsky, Hearing Examiner

ZONING\TWINPONDS-S-2528.dec

BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
TWIN PONDS FARM, LLC

Petitioner

John Hughes
Carl F. Starkey
Jagdish Mandavia
Stephen Tawes
Andrew Der
Philip Perrine
Jeremy Criss
Edward Mulheron
Alan Finneyfrock

For the Petition

Erica Leatham, Esquire*

Attorney for Petitioner

Board of Appeals Case No. **S-2529**

(OZAH
Referral No.
02-36)

Chief Roger Strock
David Rotolone
William Butler
Nancy Koerting
Rhody R. Holthaus
Susan Scala-Demby
Peter DiLima
Martin Klauber, People=s Counsel

Neither in Support of nor in Opposition
to the Petition

Stephanie Egly				*
John D. Egly				*
Hagos Gebre	*			
Robert A. Thomassen	*			
Jane S. Hunter, individually and representing	*			
Sugarloaf Citizens Association	*			
Dolores Milmoie, representing		*		
Audubon Naturalists Society and			*	
F.A.R.M. (For A Rural Montgomery)		*		
Robert Chapman, representing the Izaak		*		
Walton League				*
Beverly Strauss				*
Terry Cummings				*
Brett Michaels				*
Diane Hogan	*			
James Evans		*		

In Opposition to the Petition

Before: David R. Podolsky, Hearing Examiner

HEARING EXAMINER=S REPORT AND RECOMMENDATION

I. STATEMENT OF THE CASE

Petition S-2529, filed June 3, 2002, requests a special exception to permit a manufacture of mulch and compost use on Parcel P400, which is a 77-acre parcel located at 15315 Mt. Nebo Road on the east side of Mt. Nebo Road in the Rural Density Transfer Zone at a location near River Road, southwest of Poolesville. The application was filed jointly with Petition S-2527, which requests a special exception to permit a wholesale horticultural nursery on the subject property, and with Petition S-2528, which requests a special exception to permit a landscape contractor use on the site.

By Resolution dated July 31, 2002 and effective September 13, 2002, the Board of Appeals referred the above-captioned matter to the Office of Zoning and Administrative Hearings (OZAH) acting under the provisions of 59-A-4.125 of the Montgomery County Zoning Ordinance. The Board requested the OZAH to schedule and conduct a hearing on the petition and submit a report and recommendation for consideration by the Board. By Resolution adopted June 26, 2002 and effective August 28, 2002, Cases S-2527, S-2528 and S-2529 were consolidated.

The instant petition was initially reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated November 15, 2002 (Exhibit 36), recommended approval of the Petition subject to three general conditions applicable to all three petitions and five conditions applicable to the manufacture of mulch and compost contractor use.²⁰ The Planning Board considered the Petition on November 21, 2002, and, by a 5 to 0 vote,

²⁰ The Technical Staff also proposed separate conditions that would be applicable only to the wholesale horticultural nursery use and to the landscape contractor use.

recommended approval of the first phase of each special exception subject to 3 conditions in addition to the conditions recommended by the Technical Staff (Exhibit 43).

Initially, a hearing was scheduled by the OZAH for October 18, 2002. This hearing was rescheduled to December 13, 2002 to permit the Planning Board to issue its recommendation prior to the commencement of the hearing. At the request of the Opposition, the hearing was rescheduled to February 10, 2003 and was rescheduled again to March 4, 2003. A public hearing was convened by the undersigned Hearing Examiner on March 4, 2003. Subsequent hearings were conducted on March 7, 2003, March 18, 2003, April 4, 2003, April 22, 2003, May 2, 2003, June 20, 2003, July 7, 2003 and September 5, 2003. In addition, at the request of the Opposition, the Hearing Examiner conducted a site visit on May 6, 2003. Various scheduled hearing dates from March to September 2003 were postponed at the request of one or more parties.

During the course of these proceedings, People=s Counsel attempted to mediate disputes between the Petitioner and the Opposition. People=s Counsel reported to the Hearing Examiner that, while he believed that certain issues were subject to resolution, the parties were unable to complete negotiations in face-to-face meetings. The undersigned Hearing Examiner offered the parties the opportunity to participate in voluntary, non-binding, Aoff the record= mediation to determine if the Petitioner and the Opposition could resolve their differences. The parties were advised that they were not required to participate in this process, any agreements reached by some, but not all of the parties, would not be binding on any party that did not wish to be bound and, nothing said or done in the mediation sessions would be considered evidence of record or would be considered in connection with the Hearing Examiner=s Report and Recommendation to the Board of Appeals.²¹

At the conclusion of the mediation sessions, a status conference was held on August 20, 2003, to determine if, subsequent to the mediation sessions the parties were able to resolve any outstanding issues without the assistance of the mediator. At the status conference, it became clear that, although many issues were being addressed, the parties had irreconcilable differences. The Hearing Examiner requested that the Petitioner prepare revised proposed conditions of approval including those modifications that the parties were able to agree to through the mediation process and to submit those to the Opposition for review. Members of the Opposition agreed to meet with People=s Counsel on August 28, 2003 to review the revised proposed conditions of approval and to advise the Petitioner, on August 29, 2003, of any discrepancies between the revised proposed conditions and the Opposition=s understanding of the agreements reached by the parties, as well as any proposed clarifying language. The Petitioner was then to submit final proposed conditions of approval to the Opposition on September 2, 2003 so that the Opposition could identify any issues that the Opposition believed were not adequately addressed when the Opposition presented closing arguments which were scheduled for September 5, 2003.

²¹ For a more detailed discussion of the mediation process see Exhibit 140. Mediation sessions took place on July 28, 2003 and July 29, 2003. Although several modifications to the Petitioner=s plan of operations were made and the Petitioner consented to certain conditions of approval regulating the Petitioner=s operations, several parties remain in opposition to the Petition.

On September 5, 2003, a hearing was convened and certain materials that the parties had requested or had agreed to provide prior to the close of the record were submitted. People=s Counsel was unable to attend the September 5, 2003 session and, at his request, closing arguments were rescheduled for October 1, 2003. Closing argument was held on October 1, 2003 and the record was left open until October 7, 2003 for the submission of two documents discussed at the closing argument, to wit: the Petitioner=s final revised proposed conditions of approval and a revised phasing plan. On October 7, 2003, the record was closed.

II. BACKGROUND FACTS

For the convenience of the reader, the background facts are grouped by subject matter. Where there are any conflicts in the evidence, they are resolved under the preponderance of evidence test.

A. The Subject Property

The subject property is a 77-acre parcel located on the east side of Mt. Nebo Road in the Rural Density Transfer Zone at a location near River Road, southwest of Poolesville. The address of the subject property is 15315 Mt. Nebo Road, Poolesville, Maryland. The location of the site is depicted on page 6, *infra*. Of the 77 acres comprising the subject property, the Petitioner initially proposed to use 10.4 acres for the mulch and compost manufacturing operation²², 7.8 acres for the nursery operation, and .33 acres for the landscape contractor use. The 58-acre balance of the property would remain in forest or agricultural operations.

The property currently contains one single family dwelling and two storage buildings. The majority of the land remains in agricultural use, open field or with forest cover, and row crop agriculture has been the primary use of the property. The northeast side of the site contains a portion of a small stream that flows east toward Horsepen Branch.

²² During the course of these proceedings, the Petitioner modified its proposal to reduce the acreage devoted to the manufacture of mulch and compost from 10.4 acres to 3.7 acres.

Access to the property is via two existing gravel driveways. One driveway runs near the northern property boundary to the dwelling and storage buildings. The other driveway extends in an easterly direction from Mt. Nebo Road approximately through the center of the property to the rear (east) section. The subject property is generally level, dropping slightly toward the east. There are two ponds on the property with a maximum depth of 4 to 6 feet and covering approximately one-half acre each. The ponds are located between the southern driveway and the forested area along the northern property boundary. There is a slight ridge at the approximate center of the property, draining to the east and west. The location of the driveways, fields, forested areas and other existing conditions can be seen on the final phasing plan (Exhibit 161(b)), a reduced copy of which is reproduced on page 8, *infra*.

An area containing approximately 3 acres at the east end of the subject property is currently used for the manufacture of mulch and compost for use on the crops raised on the property. The Petitioner asserts that this is a use permitted by right in connection with the continuing farming activity on the property. The Opposition disputes the Petitioner=s contentions regarding the existing operations.

The subject property surrounds a parcel containing approximately 6 acres owned by Mr. and Mrs. John D. Egly. Mr. and Mrs. Egly=s property contains a home, barn and horse pastures.

B. The Neighborhood and Its Character

The surrounding area is wholly within the agricultural reserve and is rural in nature. Nearby uses include agricultural operations to the north, east and west, and several large lot residential uses to the south. Adjacent properties to the west, east and southeast are heavily wooded. The large lot residential uses to the south include a mixture of open fields and woodland. The size of the parcels, location of buildings and extent of tree cover on nearby properties is depicted on the vicinity map reproduced on page 9, *infra*.

C. Summary of Proposal

As indicated above, the Petitioner proposes to operate a mulch and compost manufacturing operation along with a wholesale horticultural nursery and a landscape contractor use on the subject property. The Petitioner proposes to manufacture and sell (on a wholesale basis) a soil amendment— agricultural product that is used as an additive to soil to provide additional nutrition for growing agricultural and horticultural products.

The Petitioner began making this product for use in the existing agricultural operation on the site but, with the special exception approval, plans to sell the product to others. Also, the product would be used by the proposed landscape contractor operation.

The manufacture of mulch and compost primarily would take place in the spring, summer and early fall as little organic material is available during the winter. Periodic maintenance of the product is the primary activity in the winter.

As originally proposed, ultimately there would be three phases for this activity utilizing 10.4 acres (see Exhibit 5). During the course of these proceedings, the Petitioner agreed to delete phases 2 and 3 from the Petitioner=s proposal. The revised proposal (formerly phase one) would utilize approximately 3.7 acres and would be located at the easternmost tip of the property. The mulch and composting area would be shielded from surrounding properties by existing forest and, trees and berms to be installed by the Petitioner. The portions of the adjoining properties immediately adjacent to this operation are heavily forested. Part of the forest to the south, located on an adjoining property, is subject to a Forest Conservation Easement. The areas originally proposed for phases 2 and 3 would remain in crop production.

The creation of the compost product involves composting organic products that are then mixed with topsoil in various proportions depending on the request of a customer for various horticultural conditions. The organic material to be used consists of grass, leaves, wood chips and ground brush.²³ This material is generally gathered by landscape contracting operations (the Petitioner=s and others) and brought to the site by truck. The materials are dumped into a surge pile— until needed. The material is sorted to separate out non-compostable debris which is then disposed of off site.²⁴ The remaining wood waste is placed in the composting areas and arranged in long rows,

²³ Originally, the Petitioner proposed to include manure in the mix. During the course of these proceedings the Petitioner agreed that manure would not be used in the mulch and compost manufacturing operation.

²⁴ The Petitioner=s Statement of Operations (Exhibit 152) provides that only Natural Wood Waste, as defined by COMAR 29.04.09.02(b)(4) (A tree and other natural vegetative refuse . . . includ[ing] tree stumps, brush and limbs, root mats, logs, leaves, grass clippings, unadulterated wood waste and other natural vegetative materials—) would be accepted for composting. Any unacceptable materials, such as treated wood or plastics (Arejects—) would be placed in the appropriate container and removed from the property. In the event a load is brought to the site substantially contaminated with unacceptable materials, the entire load would be rejected and the driver would be instructed to return the materials for alternate disposal. If materials are discovered during final processing (when combined with topsoil) which are not fully composted

called Awindrows.≡ These Awindrows≡ would be approximately ten (10) feet tall, twenty (20) feet wide and up to three hundred (300) feet long. The size and shape of the surge pile would change regularly as material is taken to form windrows and new material is brought to the site. As a result, any material not immediately incorporated into a windrow is regularly being manipulated, which begins the composting process. The surge pile would not exceed twenty (20) feet tall, twenty (20) feet wide and one hundred and fifty (150) feet long.

The Petitioner expects that most of the trucks that deliver the organic material would then pick up loads of the soil amendment or products of the wholesale nursery. Many of these trucks would be a part of the landscape contractor use operated from the site.

(Aovers≡) the materials would be combined with a new windrow for further decomposition, after being processed into smaller pieces, if necessary.

In order to provide for an efficient decomposition process, certain materials, such as tree stumps, branches, etc., must be broken down into smaller pieces before they can be incorporated into a windrow. To break down these materials, the Petitioner anticipates contracting with an independent contractor to bring a processor to the property. This processor, which is a noisy machine, would be used at least once a month to ensure that raw materials can be promptly transferred to a windrow. The Petitioner agreed to use the processor no more than three (3) days in a month and to limit the hours during which the processor would be used to 8:30 a.m. to 4:30 p.m. on weekdays. The processing occurs near the eastern end of the property, away from the nearest residential neighbor.

Depending on the moisture content and temperature of the windrows, the windrows are turned by a specialized machine, on an As needed basis. The machine can turn the six existing windrows in one to two hours. Once the material has composted completely, it is combined with topsoil, by processing through another specialized machine and stored under the existing pole barn to keep dry. This processing machine would be permanently located adjacent to the pole barn and would run as needed only during daytime hours. Eventually, the same truck that drops off the original materials would be able to take out a load of the new Asoil amendment. Currently, the composting operation for the farm use utilizes (1) a loader to turn the windrows, sort the surge pile and manipulate the other materials on site, (2) a machine designed to grind/chip/shred wood products; (3) a tractor with an attachment to sort raw materials and to generally control the environment; and (4) a trammel screen, soil shredder and/or soil screen to sift larger pieces from final product. In addition, the contractor that runs the grinding/processing machine often brings one to two track loaders to the property to facilitate the flow of material through the machine.

The Petitioner anticipates operating in a similar fashion if the special exception is approved, but requests the flexibility to use machines not currently utilized at the property that would make for a more efficient operation, including: (1) a specialized windrow turner or windrow turner attachment for a tractor (tractor used on the farm); (2) a processor run by a typical tractor/combine diesel engine (such as a ABandit recycler) to break down raw materials into smaller sizes; (3) one to two tractors (also used on the farm) to manage and move materials; (4) one to two front-end or track loaders (2 2 - 5 cubic yard bucket) to manage and move materials (also used as part of the nursery operation and farm operation); (5) up to another two (2) loaders that may be brought to the site by the haulers when material or equipment is taken to the site but, these loaders would not stay on the site; and (6) a trammel screen, soil shredder and/or soil screen to sift larger pieces (not fully decomposed) from final product.

In addition to the landscape contractor vehicles (S-2528), other deliveries of composting materials and pick-ups of finished product would be accomplished by unrelated landscape contractors. The vehicles used would be commercial pickup trucks or similar vehicles (as models change) a maximum of 30 feet in length, with the largest having a roll-off (dump) bed with a 30 cubic yard capacity and with a weight of less than 26,000 pounds (13 tons). In full operation, the proposed use may generate up to eight vehicles per day. The trips would generally arrive and depart outside of peak periods, but not before 7:00 a.m. or after 7:00 p.m. One full-time employee would be associated with this special exception (currently, the tenant farmer managing the farm on the property) to Aturn the windrows and collect and load material. This employee would either be a Certified Compost Operator (defined below) or would be supervised by a Certified Compost Operator/member of the Petitioner-LLC. Up to two employees of the wholesale nursery or landscape contractor uses may assist on an as-needed basis. In addition, private contractors would visit the site to grind the raw materials (up to three days per month) and/or clean the sediment traps. A person certified by the

Maryland Department of Agriculture as a Certified Compost Operator would be on duty or on call twenty-four (24) hours a day.

The Petitioner submitted an analysis of the anticipated amount of water usage from the operation of the proposed uses that breaks down water usage by amounts related to the nursery operation and to the manufacture of mulch and composting operation. The nursery operation usage is measured in gallons per day while the composting operation usage is measured in gallons per year. According to Technical Staff, this information indicates that the maximum amount of water usage from the combined operations in any given day would be 6,180 gallons, below the 10,000 gallons per day Aheavy user≡ threshold. This analysis assumes there will be no rainfall, which produces a Aworst-case≡ scenario and consequently, assumes more water usage than is likely to occur. Because the nursery stock would normally require water eight months of the year, the average annual water use indicates a minimal water usage of less than 2,000 gallons per day for both operations. Some areas of the remainder of the property that would continue to be farmed may also require irrigation.

Run-off from the composting area would be managed by earth berms, sediment traps, or a combination thereof (as shown on the revised Special Exception Site Plan, Exhibit 154) to ensure that compost material will not leach into the ponds or wetlands on the property. The Petitioner plans to reuse any run-off to irrigate the windrows and speed manufacture of the soil amendment product. The sediment traps would be maintained and cleaned at least annually to eliminate any potential objectionable odor.

To ensure that environmental concerns are addressed, the Petitioner, in consultation with the Montgomery County Soil Conservation District (ASCD≡) has developed a sediment control plan for the proposed composting operation, and will install any necessary sediment control and stormwater management control measures. This plan includes 50-foot wide grass swales and berms to direct run-off to specialized retention facilities where the water can be recycled for use on the windrows or held until any contaminants have been broken down. All sediment and erosion controls would be located outside the stream valley buffer. The final plan must be submitted to the M-NCPPC Environmental Planning staff for verification prior to issuance of sedimentation and erosion control permits from the Department of Permitting Services (DPS).

Odor associated with the composting activity would be controlled by Aturning≡ the windrows on a regular basis. Compost that is properly made under aerobic conditions would have an earthy aroma that is not offensive. Decomposition of the organic material is carried out by aerobic bacteria (occurring only in the presence of oxygen). Aerobic bacteria produce more heat and fewer odor-causing by-products than their anaerobic counterparts. In order to prevent anaerobic conditions from occurring in the surge pile, any grass clippings delivered to the site would be incorporated into windrows, in an appropriate mixture, within 48 hours of arrival. Aerating the windrows regularly supplies oxygen to the core, as well as the outer layers, of the windrows to maintain sufficiently aerobic conditions to eliminate the cause of odor from an anaerobic action. To assess the need to aerate the windrows, the Petitioner has agreed to take frequent oxygen level and temperature readings. Although the original proposal anticipated including manure into the compost mixture, the Petitioner amended its Statement of Operations to provide that no manure will be accepted for composting so as to further avoid any potential odor source.

The Petitioner, in conjunction with preparation of the State permit discussed below, and after consultation with the local Fire and Rescue Department officials, has developed a Fire Prevention Plan for the manufacture of mulch and composting use. In addition to complying with all usual local and state regulations relating to fire prevention and suppression, the plan contains the following

supplemental elements that the Petitioner has proposed as conditions of approval for the proposed special exception.

1. No smoking permitted on the site of this Special Exception.
20. No burning of wood waste is permitted on the site of this Special Exception.
21. A Adry≡ fire hydrant will be installed along the gravel path leading into the property alongside the existing ponds and will connect to the two ponds to allow Fire and Rescue Services to draw water from the ponds for fire suppression purposes. Water from the ponds may not be used for any other purpose.
22. Monthly inspection of the existing gravel road. The gravel road shall be maintained in accordance with the Statement of Operations (Exhibit 152).
23. Implementation of dust suppression measures relating to the gravel road and windrows as described in the Statement of Operations.
24. Regular inspection of the windrows by a Certified Compost Operator. Windrows will be turned when internal temperatures reach 140 degrees Fahrenheit.
25. Windrow size is limited to ten (10) feet high, twenty (20) feet wide and three hundred (300) feet long; the surge pile is limited to twenty (20) feet high, twenty (20) feet wide and one hundred fifty (150) feet long.

The proposed manufacture of mulch and compost use requires permits from the Maryland Departments of Environment and Agriculture. Specifically, a Natural Wood Waste Recycling Facility Permit from the Department of Environment and registration of the ASoil Conditioner≡ (i.e., the compost), with the Department of Agriculture will be required. The Petitioner must obtain the State permits before the proposed operations can commence.

The Natural Wood Waste Recycling Facility Permit requires the submission of: (i) a statement of operations, (ii) an approved sediment control plan and stormwater management plan and (iii) a fire suppression plan, among numerous other items. The Department reviews the documents for safety and environmental concerns before issuing the permit, and inspectors are permitted on-site to ensure compliance with the terms of the approvals.

Registration of the ASoil Conditioner≡ is required to allow the State to categorize and track the sale of the materials. The Department of Agriculture is permitted to sample the compost to ensure that the material meets specific standards and to inspect the property for compliance with standards. In addition, the Petitioner must comply with the regulations established by the Maryland Department of the Environment, as codified in COMAR 26.04.09, et seq., and in the General Permit Condition for the Operation of Natural Wood Waste Recycling Facilities as they relate to this special exception.

To buffer the Egly property from impacts from the proposed uses, the areas of the Subject Property around the Eglys= property, comprising agricultural and forest uses, are proposed to remain in those uses. The Petitioner has also proposed creating a 100 foot Abuffer≡ area along the boundary with the Egly property. The Abuffer≡ would include trees and/or shrubs near the property

lines, some existing and some to be planted, supplemented by an area of crops to a total, combined depth of one hundred feet from the property boundary.

All three requested special exceptions would utilize the existing gravel road on the Subject Property for ingress and egress. According to the Petitioner=s Statement of Operations (Exhibit 152), this road would be maintained on a regular basis to ensure that the road remains in safe and passable condition for fire equipment. Such maintenance would include monthly inspections to identify and fill any potholes and the addition of gravel or asphalt tabs to the entire road surface, as appropriate and, as permitted by the Department of Permitting Services.²⁵ Dust control measures would include watering the road as necessary (i.e., when dusty) to maintain a proper surface for travel and comply with the Montgomery County air pollution regulations relating to dust.

Finally, the areas of the Subject Property not used for the special exception uses would continue to operate as a functioning farm or be retained as forest. The farming activity has seasonal harvests where trucks and other vehicles, along with additional workers, enter and exit the property to plant and cultivate the fields, and later to harvest the crops.

The Petitioner agreed to the following conditions of approval with respect to the Manufacture of Mulch and Compost use (see Exhibit 161(a-2)):

²⁵ Asphalt tabs are remnants from roofing shingles that are Asprinkled= on the roadway and naturally bond together with heat and traffic to provide a dust-suppression and noise-reducing layer over the gravel.

5. If required by Chapter 22A of the Montgomery County Code, a Final Forest Conservation Plan must be submitted prior to issuance of a Sediment and Erosion Control Permit. This plan shall indicate placement of Category One conservation easement on all areas required for forest retention by the Forest Conservation Law.
6. Hours of operation for the operation of general equipment for this use are limited to 8:30 a.m. to 4:30 p.m., or daylight hours, whichever is less, Monday through Friday. However, deliveries may occur between 7:00 a.m. and 7:00 p.m., Monday through Friday. Saturday operations shall be limited to pick-ups and deliveries in conjunction with the Landscape Contractor operation; provided that employees will be permitted to monitor the windrows and perform any necessary operations to maintain safe conditions at the site on Saturday and Sunday.
7. Petitioner must obtain approval of the required Sediment and Erosion Control Permit by Montgomery County Department of Permitting Services based on the plan prepared by the Montgomery County Soil Conservation District. The plan shall include, but not be limited to, fifty (50) foot wide grass swales, berms and sediment basins. All sedimentation and control measures must be located outside the stream valley buffer.
8. No more than eight (8) vehicles per day may make deliveries and/or pick-ups from the property, excluding deliveries and/or pick-ups via the vehicles used for the Landscape Contractor operation. A log of the times and dates of each delivery and/or pick-up, excluding Landscape Contractor pick-ups and deliveries, shall be maintained by the Petitioner in the same form as the sample log submitted to the record (Exhibit 150).
9. The Petitioner is limited to use of a processor for grinding and/or shredding raw materials to no more than three (3) days per month. Use of this machine is limited to weekdays between 8:30 a.m. and 4:30 p.m. A log, in the same form as the sample log submitted to the record, shall be maintained to identify the days and hours of operation of the processor.

10. Only one tractor trailer per month may visit the site in conjunction with this special exception.
11. Petitioner must receive all permits required by state or county agencies.
12. The operation must implement the fire prevention plan below:
 1. No smoking permitted on the site of this special exception.
 36. No burning of wood waste is permitted on the site of this special exception.
 37. A fire hydrant installed along the gravel path leading into the property alongside the existing ponds that will connect the two ponds to allow Fire and Rescue Services to draw water from the ponds for fire suppression purposes. Water from the ponds may not be used for any other purpose.
 38. Monthly inspection of the existing gravel road; the gravel road shall be maintained in accordance with the Statement of Operations (Exhibit 152).
 39. Implementation of dust suppression measures relating the gravel road and windrows as described in the Statement of Operations.
 40. Regular inspection of the windrows by a Certified Compost Operator (as defined below). Windrows will be turned when internal temperatures reach 140 degrees Fahrenheit.
 41. Windrow size is limited to ten (10) feet high, twenty (20) feet wide and three hundred (300) feet long; the surge pile is limited to twenty (20) feet high, twenty (20) feet wide and one hundred fifty (150) feet long.

The Petitioner may not accept any manure for use in the Manufacture of Mulch and Composting operation.

8. The Petitioner shall comply with the odor control measures in the Statement of Operations.
9. A sign identifying the hours of operation for deliveries and pick-ups and the emergency contact number shall be posted at the entrance to the property. The sign shall conform to the draft sign submitted to the record (Exhibit 151).

10. A duly qualified Certified Compost Operator (as defined by COMAR 15.18.04.03) must supervise the private contractors who run the processor or make deliveries to the Site, as well as supervise the inspection and maintenance of the windrows. The Certified Compost Operator shall be on duty or on call twenty-four (24) hours a day. The Petitioner shall submit to the Board of Appeals the names of all persons holding this certification.
11. Equipment to be used and/or stored on the site will include the following, or similar machinery: (1) a specialized windrow turner or windrow turner attachment for a tractor (tractor used on the farm); (2) a processor run by a typical tractor/combine diesel engine (such as a ABandit≅ recycler) to break down raw materials into smaller sizes (will be transported to site on an as-needed basis consistent with the requirements of Condition 6.a.2., [Condition 6] above); (3) up to two tractors (also used on the farm) to manage and move materials; (4) up to two front-end or track loaders (2 2 - 5 cubic yard bucket) to manage and move materials (as used as part of the nursery operation and farm operation; an additional two (2) loaders may be brought to the site by haulers when material or equipment is taken to the site), provided the loaders are not stored on site; and (5) a trammel screen, soil shredder and/or soil screen to sift larger pieces (i.e., partially decomposed material) from the final product.
12. Petitioner will comply with Chapter 3, Air Pollution, and Chapter 31B, Noise Pollution (for residential receiving areas), of the Montgomery County Code.
13. Employees associated with this use are limited to one full-time employee to manage the operation, with assistance from up to two (2) additional employees, excluding the individual members of the Petitioner-LLC. However, up to three (3) additional employees, employed by an outside party, are permitted to assist an independent contractor associated with this special exception.
14. The Petitioner must obtain an approved Nutrient Management Plan from the Maryland Department of Agriculture for the special exception within six (6) months of approval.
15. Petitioner shall install plantings in accordance with the Site Plan (Exhibit 154).
16. Prior to abandonment of the Manufacture of Mulch and Composting use, the Petitioner must remove all materials associated with that special exception use from the site. In addition, the Petitioner must re-seed and stabilize all areas used in the special exception composting operations, as prescribed by the Montgomery County Soil Conservation Service.
17. Rows of finished compost product shall not exceed fifty (50) feet high, fifty (50) feet wide and one hundred (100) feet wide, excluding product stored under the

existing pole barn. Rows of finished mulch shall not exceed twenty (20) feet high, twenty (20) feet wide and one hundred (100) feet long.

18. All raw Natural Wood Waste must be processed within 30 days of receipt.
19. No additives, such as phosphates, lime and fertilizer may be added to the compost or mulch.
20. Petitioner shall only accept Natural Wood Waste as defined in COMAR 29.04.09.02(B)(4), except that no food materials shall be accepted. Any solid waste other than Natural Wood Waste shall be stored in the appropriate container and removed from the property.

Finally, the Petitioner proposed that the following conditions apply to all three cases (S-2527, S-2528 and S-2529).

1. The Petitioner is bound by all submitted statements and plans, as revised.
42. Access to the site for the three special exceptions is restricted to left turn ingress from and right turn egress onto Mt. Nebo Road via a channelized island. No special exception-related traffic to and from the site may use Mt. Nebo Road to the south to reach River Road. The Petitioner must inform contractors visiting the site and companies that have delivery activities associated with any of the three uses of this restriction and the Petitioner is responsible for their adherence to this restriction.
43. For the three special exceptions, a total of one outside contractor may be on the property per day. Such contractor may have more than one employee to carry out the work on the site.
44. Operations on the site are limited to the following, as shown on the amended Phasing Plan submitted by the Petitioner (Exhibit 161(b)):
 21. Phases 1, 2 and 3 of the Wholesale Nursery operation.
 22. Phases 1, 2 and 3 of the Landscape Contractor operation; however, vehicles associated with the Landscape Contracting operation shall not exceed twelve (12) vehicles stored on-site.
 23. Phase 1 of the Manufacture of Mulch and Composting operation.

45. The Petitioner shall properly maintain the landscaping areas and promptly replace any dead trees.
46. The only track vehicles used on the property shall be (1) a loader and (2) the vehicles used by the independent contractor to process materials for the Manufacturing of Mulch and Composting Special Exception operations.
47. There shall be no burial or burning of any material on the subject properties of these special exceptions.
48. Any relevant federal, state or county agency shall have the right to inspect any special exception, pursuant to standard procedures for access to the property.
49. The Petitioner shall designate a representative to coordinate with the Community Liaison Committee established in conjunction with these uses. The Community Liaison Committee shall include adjacent and confronting property owners and a representative from the Sugarloaf Citizens Association. The Committee shall meet twice a year for three (3) years from the date of approval of the special exceptions and meetings shall be arranged and noticed by the Petitioner. The People's Counsel shall receive notice of all meetings.
50. All required logs shall be made available upon request by the Montgomery County Department of Permitting Services, Montgomery County Department of Environmental Protection, the Maryland Department of the Environment and the Maryland Department of Agriculture during normal business hours. Petitioner shall distribute copies of required logs to members of the Community Liaison Committee at meetings held pursuant to Condition 9, above. In addition, all logs shall be compiled [sic] annually and provided to the Board of Appeals, along with summaries of all Community Liaison Committee meetings for that year.
51. The Petitioner shall install a steel, double-lined 300 gallon tank for #2 diesel fuel. The tank shall be inspected regularly and replaced as needed.

52. The Petitioner shall maintain at least \$1,000,000 in liability insurance from an insurance company rated A or better. A Certificate of Insurance shall be made available upon request.

III. SUMMARY OF TESTIMONY

The following is a **summary** of the testimony that was presented in connection with Case No. S-2529. It should be noted that some testimony, although primarily related to one of the other two cases (S-2527 or S-2528), may affect the decision in the present case due to the cumulative effects of the three proposed special exceptions as well as the inter-relationship between the three proposed special exceptions. Therefore, testimony relevant to all three cases is described in this Report. However, because each special exception must stand or fall on its own merits, testimony related solely to one of the other two cases is not repeated in this Report. It should be noted that some testimony presented early in these proceedings was superceded by subsequent modifications to the proposed operations.

John Hughes, a member of the Petitioner, testified regarding the operation of the proposed mulch and compost manufacturing use. He stated that the process for manufacturing mulch and compost involves the delivery of leaves, grass, sticks, wood chips, stump grinds and other natural materials to the site. Under the Petitioner's proposal, a large portion of those materials would be brought to the site by the employees of the landscape contractor use when they return to the site in the afternoon. These materials are dumped into a Asurge pile. Non-compostable materials, such as construction debris, plastic and other items are sorted from the natural materials, placed in trash cans and disposed of off site. The materials suitable for mulch and compost manufacture are broken down from large to small pieces in a processor. After processing, the material has approximately 1/7 of its original volume. The reduced materials are placed in long piles called Awindrows. Mr. Hughes testified that when the internal temperature of the windrow rises to approximately 140 degrees, the windrow is turned. The turning or manipulation of the windrows allows oxygen and water to reach the internal areas of the windrows. The combination of oxygen and water speeds up the breakdown of the material into compost by providing more favorable environment for aerobic bacteria that cause the decomposition.

Mr. Hughes testified that a primary source of mulch and compost material would be Mulheron Tree Service (Mr. Mulheron is a member of the Petitioner) and the landscape contractor use. The Petitioner would accept only organic materials that decompose. No processed lumber or construction debris would be accepted. Mr. Hughes explained that the mulch decomposes further into a soil additive which would then be available to the landscape contractor use, the nursery use and for other landscape contractors who would purchase the material on a wholesale basis. Mr. Hughes testified that it takes 6 to 10 months to produce the soil amendment, depending upon moisture levels. He also testified that if the windrows are turned regularly, there should be no noticeable odor.

Mr. Hughes testified that the Petitioner must obtain a Natural Wood Waste Processing Permit from the State of Maryland. According to Mr. Hughes, the State permit requires the processing of material every 30 days. Therefore, a processing machine must be brought to the site at least once a month to process large branches and bushes into pieces that are small enough to be composted.

Mr. Hughes testified that there would be no on-site burning of materials. He explained that the Petitioner has developed a fire prevention plan that is subject to approval by the State. Water to suppress any fire that might occur would come from the two ponds on the property. The Petitioner will install a Adry hydrant≡ that would allow a fire department pumper truck to draw water from the two ponds. Mr. Hughes testified that with proper turning and watering, the likelihood of a fire in the windrows is remote. The Petitioner will provide space between the windrows to allow fire trucks to access the windrows in an emergency. Also, the Petitioner has a 1,000 gallon water truck on site. Mr. Hughes testified that the on-site driveway to the composting facility is approximately 6/10 of a mile long. According to Mr. Hughes, one cannot hear the processor until one has driven about half way to the compost area. Mr. Hughes testified that one full-time employee would be primarily devoted to this use. However, as this use does not require constant attention, the employee could assist with the farming operation, and the employee could borrow nursery employees or landscape contractor employees to assist with the loading of the processor. Mr. Hughes pointed out that, to follow an established practice to control leaching, the compost pile would be placed on wood chips.

Mr. Hughes testified that the trucks used for the composting use would have a 30 cubic yard capacity. Mr. Hughes explained that there are two ponds on the subject property. One pond is approximately 120 feet by 50 feet and 3 feet deep. The Petitioner=s calculations indicate that this pond would hold approximately 157,000 gallons of water. The second pond is approximately 140 feet by 45 feet and 5 feet deep and would hold about 236,000 gallons of water. The Petitioner proposes to install a security gate at the front of the property. In response to questions regarding possible fires or other problems with the operations during hours when no activity is taking place, Mr. Hughes testified that a farmer would be on site during the farming season.

Mr. Hughes testified that the Petitioner would use a 4-foot temperature probe that extends into the middle of a windrow. This probe is checked at least daily to monitor the internal temperature of the windrow. He stated that all employees have either cell phones or two-way walkie-talkies so that they can be contacted immediately in the event of a problem.

Jeremy Criss, Agricultural Services Manager for Montgomery County, testified in support of the petition. He believes the Petitioner=s operation is consistent with the agricultural uses in the area and would be in harmony with the neighborhood. In Mr. Criss= opinion, composting is an agricultural use. Also, the proposed nursery would be an agricultural use and the mulch and composting operation would support the nursery.

Carl F. Starkey, who was recognized as an expert in transportation planning and traffic engineering, testified on behalf of the Petitioner. He stated that he is familiar with the Zoning Ordinance, Adequate Public Facilities Ordinance and Montgomery County road regulations. He described the travel routes and volumes of traffic that travel the roads that would be used by the vehicles accessing the mulch and compost manufacturing operation. He testified that the roads that would be used by these vehicles (Mt. Nebo Road to the north of the site, West Offutt Road and West Willard Road) have low volumes for roads with the capacity of these roads. Mr. Starkey testified that the proposed use would generate less than 5 trips per hour, which he views as *de minimus*. Accordingly, Mr. Starkey concluded that the proposed use, even in conjunction with the other two proposed special exceptions, would not adversely impact the roadways. He described the volume of traffic generated by the proposed uses as minimal and stated that the Technical Staff concurred with his finding that the volume of traffic generated by the proposed uses would not create any problems.

Mr. Starkey testified that the road network has a capacity for 8,000 trips per day. Currently, there are approximately 200 trips per day on Mt. Nebo and West Offutt Roads. As originally proposed, the three uses would increase the number of trips per day by approximately 70 trips. During the course of the proceedings, the Petitioner reduced the intensity of the proposed uses so that the three uses would combine to generate less than 70 trips per day. Mr. Starkey testified that the roads to be used by the Petitioner have no weight restrictions and more than adequate radii at all intersections. Mr. Starkey stated that all relevant intersections operate at level of service A. He testified that currently, some tractor-trailers use Mt. Nebo Road and West Offutt Road. According to Mr. Starkey, approximately 4% to 11% of the vehicles on these roads are large trucks. He testified that the traffic volume on West Offutt Road is approximately 19 vehicles per hour. This figure represents a total for traffic in both directions. Thus, there is 1 vehicle every 3 minutes in one direction or the other. He testified that the roads meet geometric design criteria for low volume roads.

Mr. Starkey testified that the entrance to the subject property would be channelized so that vehicles would be required to make a right turn when exiting the property and would have to enter the property by making a left turn from southbound Mt. Nebo Road. According to Mr. Starkey, the channel is designed to County standards and would effectively prevent truck traffic from using Mt. Nebo Road to the south of the subject site.

Jagdish Mandavia, an expert in civil engineering, testified on behalf of the Petitioner. As of the time of his initial testimony, the water conservation district was developing a water quality plan for the proposed uses. Mr. Mandavia testified that the Petitioner will install a sediment control pond that would hold 10,000 cubic feet of water (74,000 gallons). The Petitioner proposes to install earth berms inside the property boundaries to direct water into the sediment control pond. In Mr. Mandavia's opinion, the 50-foot natural vegetative buffer between the mulch and composting facility and the property to the south is adequate to prevent flooding of the property to the south. He testified that the windrows are designed to keep water within the windrow area. The outermost windrows would direct water toward the site. As a result, less water would leave the site than under current conditions. In Mr. Mandavia's opinion, the proposed use would not create a nuisance.

Stephen Tawes testified as an expert in landscape architecture and site planning. He described the site plan submitted by the Petitioner. Mr. Tawes testified that agricultural uses surround the property which is in the RDT Zone. He stated that the proposed uses would operate at the same scale of activity as surrounding uses. According to Mr. Tawes, the three proposed uses have been sited to minimize their impact on the neighborhood. He does not believe that the proposed use would have any non-inherent impacts. Mr. Tawes emphasized that all parking for the proposed uses would be on site and would be screened from Mt. Nebo Road and from the Eglys property. He noted that all three uses would be operated at least 50 feet from any property line. Mr. Tawes stated that he has spent 6 hours on the site over the course of 3 visits during the summer and fall.

Mr. Tawes testified that the compost and mulching area is surrounded by woods. He testified that the facility would be a substantial distance from any residence. He noted that the prevailing winds in the area are from the west. Therefore, to the extent that the proposed use has any odors, the odors would normally be blown toward the Izaak Walton League property, which is not improved with residences. Mr. Tawes agrees with the Technical Staff that there are no non-inherent impacts of the proposed use and that the use is properly located in the agricultural reserve. He emphasized that

the mulch and composting facility is sited as far from residential properties as possible, is screened by existing vegetation, and does not require long-term parking.

Andrew Der testified on behalf of the Petitioner. Mr. Der stated that he prepared an environmental impact analysis. He reviewed the condition of the property, regulations applicable to the proposed uses and the nature of the uses. In his opinion, no leaching will occur. The Petitioner proposes to use ABest Management Practices which include, but are not limited to, a 100-foot buffer around all streams, compliance with a water quality management plan and the operation of a sediment control pond. Mr. Der testified that the site is not hydrologically connected to the surrounding area. He explained that there is rock approximately 40 inches below the surface. He testified that the decomposing plant material in the windrows is natural. The combination of wood chips and Best Management Practices would prevent the excess concentration of any pollutants. He explained that the materials in the windrows would be filtered by the wood chips and then by the soil. He testified that the conservation plan includes a nutrient management plan and covers the entire site. The goal of the conservation plan is to control runoff through the use of crop rotation, planting of areas subject to soil movement, maintenance of buffers, vegetative filtration, and the sediment basin.

Mr. Der testified that for residential areas in Montgomery County, the County Noise Ordinance permits up to 65 decibels at a property line. Mr. Der testified that a decibel meter did not register any sound at the Petitioner's property line when the sound of the current mulch and composting operation was tested. He acknowledged that the meter does not measure less than 50 decibels. In Mr. Der's opinion, the existing vegetation and distances provide adequate sound buffering. Inasmuch as no animal matter would be included in the compost, and the Petitioner will take proper action to assure aerobic breakdown of the materials, there would be no noticeable odors, according to Mr. Der.

Mr. Der testified that a water appropriation permit is not required as less than 10,000 gallons of water would be required for the proposed uses. Mr. Der testified that no sediments, hydrocarbons or other urban pollutants would leave the site. On cross-examination, Mr. Der acknowledged that grass may become anaerobic in a period from 2 days to 2 weeks, depending upon weather and moisture conditions. If grass becomes anaerobic, it may have an odor. According to Mr. Der, the prompt processing of grass into the windrows would avoid that effect.

In response to questioning from the Opposition, Mr. Der testified at great length as to the relationship between the subject site and the Poolesville Aquifer. In summary, he concluded that the net hydrostatic pressure is upward under the site, meaning that normally any pollutants that might leach into the soil at the site would not filter down through the underlying rock into the Aquifer. Despite persistent cross-examination, Mr. Der remained of the opinion that the use would not affect the Aquifer or any neighbor's water supply because the natural materials generated by the composting facility (although somewhat concentrated in the windrows) would be filtered by the wood chips, soil and the root matrix of the buffer area.

Philip Perrine, a land use planning expert, testified on behalf of the Petitioner. He stated that he has visited the site and driven around the area. He reported that the area is designated for agricultural and open space uses under the Master Plan. He described the relevant neighborhood and stated that it contains agricultural and related uses, large open tracts of farmland, some residences on large tracts to the south along Mt. Nebo Road, and the Izaak Walton League property to the east that is used for recreational purposes. He described the area as agricultural in nature and noted that the site is in the RDT Zone. Mr. Perrine testified that all three proposed uses are permitted

as special exceptions in the RDT Zone. Mr. Perrine summarized his understanding of the proposed mulch and compost manufacturing use and testified that it would have no non-inherent impacts on the neighborhood. In his opinion, the proposed use is compatible with the surrounding area. He testified that, prior to 1985, the three special exceptions requested by the Petitioner were treated as one unified special exception use. According to Mr. Perrine, the three proposed special exceptions are typically grouped together. He noted that the Zoning Ordinance requires a lenient application of the standards for special exceptions in an agricultural area. He disputed the Opposition's contention that the neighborhood is a Aone-family residential area.

Mr. Perrine testified that some elements of the proposed use are permitted as a matter of right. For example, mulch and compost manufacturing in connection with an on-site farm is permitted. He testified that the composting area is 900 feet from the residence to the south (the Thomassen residence) and 1,400 feet from the Egly residence. He testified that the inherent aspects of a mulch manufacturing operation include delivery of material to the site, stockpiling of material on the site, reducing the material in volume through the use of a chipper, further volume reduction and processing in windrows and removing the product from the site by truck.

Mr. Perrine testified that when he visited the site, he did not notice any offensive odor when he walked among the windrows. He did notice the smell of leaves and dirt. However, he did not notice any odors at all at a distance 30 feet from the windrows. According to Mr. Perrine, the proposed use would have no non-inherent impacts on the roadways and the noise generated by the proposed use would not exceed County noise limits for residential areas. In Mr. Perrine's opinion, the proposed use would cause no non-inherent impacts and would be compatible with the surrounding area, which is agricultural. He emphasized that the site has been designed to minimize the impact of the proposed uses and that extensive buffering is present and that additional buffering would be installed.

At the Opposition's request, Chief Roger Strock of the Montgomery County Fire Department testified. He stated that he is familiar with a fire that occurred at the Maryland Environmental Services (MES) facility, but he was not present. It is Chief Strock's understanding that State law requires 25 feet of clear space between windrows. He testified that a 4-wheel drive firefighting vehicle can traverse most gravel roads. He testified that a pumper truck could travel across pastures. He is aware of one or two fires in mulch manufacturing facilities. He believes that the fire department could adequately respond to a Aorse case scenario of a spontaneous fire at the site. In his opinion, the Petitioner's fire prevention plan is adequate.

Robert Chapman testified on behalf of the Bethesda-Chevy Chase Chapter of the Izaak Walton League of America. The League opposes the proposed special exception because it is concerned with the possibility of water runoff that would affect the fishing and recreational opportunities on the League property to the east of the site. The League is concerned about the possibility of a fire in the mulch piles. Mr. Chapman acknowledged that if the sediment control pond keeps water from the composting operation from entering the stream, it would alleviate the League's concerns.

Beverly Strauss, a realtor who lives on Westerly Avenue in Poolesville, testified in opposition. She believes that property values will drop as a result of the proposed special exceptions. She is concerned that the traffic generated by the proposed use would create noise and that people run stop signs. She is also concerned that the proposed use would cause odors. In response to questioning, she acknowledged that she is not familiar with the amount of traffic that would be generated by the proposed use and does not know the extent to which odors would be generated by the proposed use.

She further admitted that she has not reviewed the file or listened to the testimony in these cases. She testified that the proposed special exception would have the same effect anywhere in the RDT Zone and, accordingly, does not believe that this use should be permitted in the RDT Zone.

Terry Cummings, of 15200 Mt. Nebo Road, testified that she lives across Mt. Nebo Road from the site on a 430-acre parcel of land upon which she operates an animal sanctuary. She testified that she is concerned regarding truck traffic on Mt. Nebo Road. Ms. Cummings stated that school busses frequently visit her property so that children can interact with the animals at the sanctuary. She is concerned that the school busses and the Petitioner=s trucks may have difficulty passing each other in opposite directions. Ms. Cummings testified that normally 4 or 5 school busses and 8 other vehicles visit the animal sanctuary each day. Typically, visitors are at the animal sanctuary between 10 a.m. and 2 p.m. to visit the farm animals. Ms. Cummings has had as many as 1,000 visitors on AFarm Day.≡ The animal sanctuary operates fund raisers in September that involve about 900 visitors between the hours of 1:00 p.m. and 4:00 p.m. The animal sanctuary is open 7 days per week. Animals are delivered to the animal sanctuary on trucks and trailers. On cross-examination, Ms. Cummings testified that she is not aware of any conflicts between busses and trucks occurring during the year preceding her testimony. Ms. Cummings also testified that she has not heard the stump grinder that the Petitioner has used for the current composting facility.

Hagos Gebre, of 14929 Mt. Nebo Road, testified that he works in the District of Columbia and used to live there as well. He moved to the Poolesville area to have a quiet environment. In the past several months Mr. Gebre has noticed several more trucks on Mt. Nebo Road. He believes this is changing the character of the neighborhood. Mr. Gebre is concerned about the possible impact of the proposed activities on property values. He was not able to identify any non-inherent effects of the proposed use. Mr. Gebre acknowledged that he has not noticed any odors or heard noise from the current operations on the property.

Robert A. Thomassen, of 15001 Mt. Nebo Road, whose property adjoins the subject property on the south, testified that he is concerned with increased traffic on Mt. Nebo Road and the noise that may be generated by the trucks using the gravel road on the Petitioner=s property. He pointed out that some of the trees that would screen the Petitioner=s property from the Thomassens= property are located on the Thomassens= property. Mr. Thomassen testified that he is concerned regarding the effect of the proposed use on his water supply. Mr. Thomassen heard that during the drought of 2002, the Town of Poolesville imposed water restrictions. He testified that he has heard trucks on the gravel road, but has not heard the Aprocessor.≡ Mr. Thomassen testified that he has heard farm equipment which he described as Abackground noise.≡ He testified that currently, the windrows are located within 13 to 16 feet of his property line. He testified that many of the trees shown on the site plan originally submitted by the Petitioner are actually on the Thomassen property. He believes that the proposed uses will have an impact on the community and is not satisfied by the Petitioner=s expert testimony that pollutants would not get into the ground water. The only aspect of the proposed use identified by Mr. Thomassen as non-inherent would be the use of a stationary Aprocessor≡ which is a noisy machine.

John D. Egly, of 15115 Mt. Nebo Road, testified in opposition. Mr. Egly testified that he has been a real estate appraiser and, in his opinion, the composting operation would decrease the value of his property. He believes that mulch and compost manufacturing is a non-residential use and that the neighborhood can be accurately described as a rural residential area. Mr. Egly testified that there are no Afarms≡ in the area. He explained that he has not observed crop farming in the area. He is

concerned regarding noise and odors from the proposed use and believes that the channelization of the driveway would alter the vista along Mt. Nebo Road.

At the request of the Opposition, William Lee Butler testified. Mr. Butler is an independent contractor who has been retained by the Petitioner to grind up branches and leaves on the site. The processor that he has used is known as *Athe Beast*.[≡] He explained that the processor that he uses is 15 feet long, has a diesel engine, and operates at 500 horsepower. Mr. Butler uses an excavator to feed material into the processor. The processor is brought to the site by a Ford F900 or F800 dumptruck. The processor is 8 to 9 feet wide and is on wheels. According to Mr. Butler, he does not need to use ear protection devices when he operates the processor.

Brett Michaels, of 14920 Mt. Nebo Road, testified that he is concerned regarding the noise that the proposed uses may generate. He stated that he is aware of a case in which Mr. Hughes told a truck driver not to drive south on Mt. Nebo Road, but the driver drove in that direction anyway. He believes that the proposed channelization would help the situation, but that some trucks may use Mt. Nebo Road to the south despite the Petitioner=s efforts. Mr. Michaels believes that all three special exceptions are inconsistent with the agricultural preserve and allowing them in the RDT Zone would affect property values.

The Opposition called Nancy Koerting as a witness. Ms. Koerting is the plant supervisor at the Montgomery County yard waste composting facility at the Maryland Environmental Services site. She testified that she manages the composting facility and is familiar with composting operations. Ms. Koerting was recognized as an expert on composting. She testified that the Montgomery County facility is an asphalt- surfaced facility with 3 on-site ponds. She explained that because of the amount of asphalt, the County facility must have a water management plan. The ponds are lined with clay and have spillways. At the Montgomery County facility, material arrives by rail or truck. The Montgomery County facility uses tub grinders. The County facility uses 18-foot wide windrows and the composting material includes grass and leaves. The County facility uses Scarabs which straddle the windrows, chop the material and mix the material in the windrows by taking material from the bottom and dropping it on the top. She testified that materials are kept in windrows for 6 to 8 weeks and windrows are actively turned at least once a week. Ms. Koerting explained that the temperature of windrows is taken daily to maintain optimal conditions. After material is composted, it is screened to eliminate large pieces of brush and other contaminants through the use of a trammel screen. The County facility uses *Aforebays*[≡] which are areas to collect materials to prevent them from getting into the ponds. The forebays are cleaned regularly. The ponds are drained and cleaned as necessary, which has occurred twice in the twelve years that she has worked there. Ms. Koerting has received some complaints regarding odors at the facility. The Montgomery County facility accepts deliveries in 100 cubic yard capacity trucks. Material leaves the County facility in trucks sized from pick-ups to tractor-trailers. If not properly handled, materials can cause odors in as little as 3 days. Ms. Koerting explained that windrows require oxygen and water to properly compost. A compost operator must maintain the proper carbon, nitrogen and oxygen mixture. According to Ms. Koerting, hot spots can occur. The causes of hot spots include improper moisture content, inadequate porosity and the shifting of the pile. If the temperature in a windrow exceeds 170 degrees, combustion could occur. If the material is not put into a windrow within a reasonable period of time, a hot spot could occur in the surge pile.

Ms. Koerting testified that a fire occurred at the MES facility in 2002. She testified that there may have been a lightening storm prior to the fire at the MES facility, and that two of the ponds at the

facility were empty because they were having work done on them. Ms. Koerting testified that, as a result of the fire, the County has 24-hour per day security personnel on the site, and the personnel have been trained to check the temperature probes. The County has installed a dry hydrant and will install a wet hydrant. She testified that the County facility has 52 acres of composting area. Ms. Koerting testified that she has not visited the property that is the subject of S-2529. She stated that a grinder, turner, loader and screener are all necessary equipment. She testified that adding moisture to and turning the windrows, as well as monitoring temperature probes would reduce the risk of fire. The windrows at the MES facility are 50 feet to 300 feet long and 18 feet wide and up to 12 feet high. Ms. Koerting testified that there is a Abetter composting school≡ which involves a 3-day class on the art and science of composting. She testified that if best management practices are used, odors would be minimized.

Rhody R. Holthaus, of the Maryland Division of Environmental Services, testified at the request of the Opposition. Mr. Holthaus testified that he formerly worked at the yard waste composting facility in Dickerson. He testified that the Maryland Department of Environment regulates the discharge of stormwater at the MES facility. Currently, the MES ponds discharge into tributaries of the Potomac River.

Susan Scala-Demby testified that she is a Permitting Services Manager for Montgomery County, Maryland. Currently, the Petitioner is operating a composting facility at the site as an accessory to the agricultural use of the site. According to Ms. Scala-Demby, the Petitioner can compost materials on the site, and can bring in materials for composting if the materials are used on the site. She testified that the processing of Awood waste≡ requires a State permit. According to Ms. Scala-Demby, under the Zoning Ordinance, the Petitioner could take compost manufactured on the site to another farm, if the other farm is under the same control as the subject property.

Peter DiLima testified that he is an illegal dumping investigator for Montgomery County, Maryland. He stated that wood waste, grass, leaves and similar materials are considered Asolid waste≡ under Chapter 48 of the Montgomery County Code. He has visited the site on two occasions and found a few small piles of Aslash≡ (undergrowth). He testified that the State issues Awood waste≡ permits and the County handles enforcement. On Mr. DiLima=s visits to the site, he did not see evidence of stumps. He testified that the site is well maintained and the windrows are neat.

David Rotolone, a Program Manager for the Montgomery County Department of Environmental Protection, testified that, although he has not visited the site, he has visited other composting sites. He testified that the AMossburg≡ site grew into a dump and caught fire in 1994. He testified that other sites that started out as wood waste sites and changed into dumps and/or accepted construction debris have had fires. He was also aware that the Montgomery County facility had a fire. He conceded that the potential for a fire is inherent in a mulch and compost manufacturing operation.

Mr. Rotolone testified that if the proposed special exception is to be granted, certain conditions of approval should be imposed. These conditions should include limits on the size of windrows. The core temperature of the windrows should be monitored and that the windrows should be turned if the core temperature reaches 140 degrees. He also recommended that the windrows be accessible to fire trucks and that fire breaks be used. Mr. Rotolone suggested that a dust suppression plan, as well as noise, vermin and odor control plans be required. He suggested that the Petitioner be required to keep windrows separated from the surge piles containing new materials, and that garbage and construction debris should be kept out of the windrows. Finally, he recommended that the workers be

trained in OSHA and MOSHA regulations and that the Fire Marshall=s office inspect the facility from time to time.

Dolores Milmoe testified on behalf of the Audubon Naturalists Society and AFor A Rural Montgomery≡ (F.A.R.M.). Ms. Milmoe testified that she believes there is a thin soil layer over fractured rocks underneath the site. She is concerned that this condition would allow for contamination of the underground water source. It is her understanding that clay soil does not filter pollutants as well as other soils. She believes that tests of ground water in the area are necessary. Ms. Milmoe stated that Mt. Nebo and West Offutt Roads are rustic roads that she believes are not adequate for truck traffic. On cross-examination, Ms. Milmoe admitted that she is not an expert in hydrology and conceded that only a hydrologist could analyze the contamination potential of the proposed use.

Stephanie Egly, of 15115 Mt. Nebo Road, testified in opposition. Ms. Egly presented a video tape (Exhibit No. 104) showing conditions along West Willard Road, West Offutt Road and Mt. Nebo Road. The video tape revealed Ms. Egly=s vehicle passing a truck going in the opposite direction on West Willard Road. Ms. Egly testified that West Willard Road has a 35 mile per hour speed limit and West Offutt Road has a 30 mile per hour speed limit. She testified that the paved surface of West Offutt Road narrows to 15 feet at one bridge, 14 feet at another bridge and 13 feet 10 inches at another spot. She stated that the speed limit on Mt. Nebo Road is 25 miles per hour and that Mt. Nebo Road narrows to as little as 11 feet 5 inches in width at one point south of the site. The video tape showed Ms. Egly=s vehicle passing a car going in the opposite direction without slowing down. Ms. Egly testified that there are a lot of school busses on West Offutt and Mt. Nebo Roads. On cross-examination, Ms. Egly acknowledged that her vehicle passed (in the opposite direction) 4 or 5 cars during the 20-minute video. She acknowledged that school busses and cars currently meet each other from opposite directions and are able to pass. She stated that the major issue is the speed of the trucks.

Ms. Egly pointed out that her tape includes scenes of the composting area. According to Ms. Egly, one of the piles appears to be smoking. However, on cross-examination she acknowledged that she did not call the fire department and that the A smoke≡ could be steam. In Ms. Egly=s opinion, the mulch and composting facility will act as a Adump≡ or transfer station. She questioned the calculations as to the water capacity of the ponds presented by the Petitioner=s experts and noted that the ponds have sloped sides. In Ms. Egly=s opinion, the operations that the Petitioner proposes are not at the same scale as farming operations. In her opinion, the roads are too narrow and too winding. Ms. Egly asserted that the compost facility should not be located near residences as it is a commercial use.

In rebuttal, Mr. Perrine testified that almost all roads in the agricultural preserve are rustic. Therefore, almost any special exception use in the RDT Zone must use rustic roads for access. According to Mr. Perrine, this renders the use of rustic roads an inherent aspect of any use that is allowed by special exception in the RDT Zone. He testified that the area is agricultural - not residential in nature because residential lots comprise approximately 5% of the surrounding area. He noted that the zone requires that residential lots have at least 25 acres per parcel, although smaller lots have been Agrandfathered.≡ He acknowledged that all 8 residential lots to the south of the site along Mt. Nebo Road are smaller than 25 acres. Mr. Perrine stated that the area is not residential according to the Master Plan, which describes the area as agricultural. He noted that the Isaak Walton League property to the east of the subject property contains 493 acres and is a working

conservation farm. Mr. Perrine drew a distinction between the RDT Zone which expresses a preference for agricultural uses and other rural zones which allow 1 house per 5 acres. According to Mr. Perrine, this distinction means that in the RDT Zone, the residential uses must be compatible with the agricultural uses, whereas in the rural residential zones, the agricultural uses must be compatible with the residential uses. Mr. Perrine also testified that the Arustic roads designation is not intended to affect the use of abutting properties.

Diane Hogan, of 15001 Mt. Nebo Road, testified that she owns and resides on a property adjacent to the subject property. Ms. Hogan testified that even at the current levels, the composting facility is noisy. Ms. Hogan does not object to farming operations, but believes that the proposed use would exceed the level of activity of a farm. She testified that the Petitioner's machinery currently operates on all weekdays and Saturdays and sometimes on Sundays. The machinery, as well as the trucks traveling on the gravel driveway, make noise. She testified that Phase 3 of the composting operation (which has since been deleted from the proposal) can be seen from her house. She testified that, in response to complaints from the neighbors, the Petitioner has cleaned up the site.

Andrew Der testified in rebuttal that he has analyzed the ecological impacts of the stormwater management ponds. According to Mr. Der, odors would occur only if the ponds go anaerobic. According to Mr. Der, the Petitioner's plans would adequately assure that the ponds would not go anaerobic. In Mr. Der's opinion, sheet flow of water with a 100-foot buffer is more than adequate to handle anticipated rainfall. He noted that, because the County facility at Dickerson has been paved, water flow and the concentration of pollutants at that facility is greater than would occur at the subject site. Also, paving underneath the windrows causes heat to build up in the windrows, which may have contributed to the fire at the MES facility. Mr. Der concluded that the proposed use would not impact the aquifer in general or the Poolesville water supply in particular. According to Mr. Der, the system proposed by the Petitioner would be sufficient for less than optimal soils. In Mr. Der's opinion, a study suggested in a letter from Dr. Field presented by the Opposition, is appropriate only for major projects such as large scale mining or industrial operations with substantial pavement. He noted that the Maryland-National Capital Park and Planning Commission and Montgomery County Department of Environmental Protection may require environmental analyses. He noted that they have not required such a study in the present case. He testified that the area is already subject to agricultural runoff. According to Mr. Der, the new use would have no additional impact. He emphasized that there is a 100-foot buffer from the stream valley crossing the site.

In rebuttal, Stephen Tawes testified that Mr. Thomassen is correct that the trees shown on Exhibit 112 are on the Thomassen property. A revised site plan and a revised phasing plan will be submitted to correctly locate the trees. Mr. Tawes stated that the Thomassen trees are in a forest conservation easement.

In rebuttal, Mr. Mandavia testified that the sediment traps have been sized to meet County standards.

Mr. Hughes testified in rebuttal on behalf of the Petitioner. He stated that the Petitioner is employing best management practices in its current operation of the composting facility. He stated that he reviewed his earlier testimony regarding the operation of the proposed mulch and compost manufacturing use. He noted that the Beast processor is shut down every 4 hours or so for maintenance. He agreed to limits on the hours and of operation, and ultimately agreed to eliminate manure from the proposed mixture. Mr. Hughes testified that the Petitioner would agree that an employee of the Petitioner would supervise any independent contractor using a tub grinder. Mr.

Hughes agreed to submit a list of proposed conditions of approval that would address some of the Opposition=s concerns.

Jim Evans, of 20200 Darnestown Road in Dickerson, testified that he lives in proximity to the County=s composting facility. On March 10, 2002, he saw a fire at the composting facility and called the fire department. He testified that it was necessary for his family to evacuate their house and that 32 fire trucks responded to the MES fire. Smoke from the MES fire damaged his house. Also, he has noticed odors emanating from the MES facility.

Jane Hunter, of 20400 West Hunter Road, Beallsville, Maryland, testified individually and on behalf of the Sugarloaf Citizens Association. Ms. Hunter testified that she was born on a farm, was raised on a dairy and beef farm and has always lived on a farm. Ms. Hunter, along with her husband, operated a 2400-acre farm on which they grow wheat, corn and soybeans. Ms. Hunter was recognized as an expert in farming. Ms. Hunter testified regarding the plowing, planting, dressing and harvesting of crops. She described the time it takes to perform the various farming operations as well as the vehicles required. According to Ms. Hunter, all farmers must have a nutrient management plan. According to Ms. Hunter, the Petitioner has not provided enough specificity regarding the equipment to be used to determine noise levels. She is especially concerned regarding the noise from the composting facility. She is also concerned that some screeners generate dust that can affect nearby properties. She testified that the gravel driveway will produce dust when vehicles enter or exit and, in her opinion, 86 trips would produce a lot of dust. Ms. Hunter testified that she lives approximately 1 2 miles from the County composting facility and approximately 1 2 miles from a farm that produces compost. She testified that while the composting of leaves smells Awoodsy=, grass changes the odor. She testified that manure would change the odor even more. In her opinion, an industrial zone with better roads would be a more desirable location than the RDT Zone for the proposed use. She acknowledged that the roads have sufficient capacity for the volume of traffic that would be generated by the proposed uses but, adequate capacity encourages speeding. Ms. Hunter expressed concern that enforcement of any conditions of approval would be a problem and that the County would not adequately enforce such conditions. She testified that the nearest fire station is 8 to 9 miles from the site. Ms. Hunter also expressed concern regarding sediment control ponds overflowing and polluting the area. If the special exception is granted, she believes there should be strict limits on the days and hours of operation. Ms. Hunter testified that residents of the area moved to the agricultural reserve with the expectation that there would not be Ahighly industrialized= facilities. She doubts that the traffic route limits proposed by the Petitioner can be enforced. Ms. Hunter is of the opinion that the Petitioner has not complied with State law regarding natural wood waste recycling facilities. She believes that the Petitioner has not provided sufficient detail regarding the size, height and length of windrows and surge piles and the disposition of uncompostable materials. In response to Ms. Hunter=s concerns, Mr. Hughes testified that uncompostable materials would be placed in a container for off-site disposal and that a delivery with an unacceptable level of uncompostable materials would be rejected in whole.

Ms. Hunter testified that the beautiful historic area of Dickerson has been degraded by the Montgomery County facility. She believes that the weight of trucks visiting the site will damage the roads and that they will be reduced to rubble. She testified that the local roads are on the Bicycle Master Plan. In Ms. Hunter=s opinion, a composting facility should not be allowed in the RDT Zone.

Several residents of the area submitted letters in opposition but did not testify. The Cabin John Citizen=s Association supported the Petition. In assessing the credibility of the testimony, it should be noted that, while the Opposition raised many serious concerns and presented significant evidence, many of the Opposition=s allegations were not supported by a preponderance of the evidence of record. For example, the Opposition asserted that the Petitioner=s current operations do not comply with laws or regulations in numerous ways. However, Exhibit 158, submitted by the Opposition, reveals that, upon investigation, most allegations of non-compliance were deemed to be unfounded. Also, many of the witnesses in opposition felt that this use should not be allowed anywhere in the RDT Zone. That issue is beyond the Board=s purview as the District Council amended the Zoning Ordinance to permit this use as a special exception in the RDT Zone.

IV. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided pre-set legislative standards are met. The special exception is evaluated in a site-specific context because there may be locations where it is not appropriate. Nevertheless, a special exception use is deemed compatible within the zoning district in which it is authorized unless specific adverse conditions at the proposed location are shown to overcome this presumption. Impacts which are inherent in the special exception use, regardless of where it is located within the zoning district, may not be the sole basis for denial of a special exception.

Further, Section 59-G-2.30.000 which establishes standards for manufacture of mulch and composting uses states:

- (5) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones.

The proposed use is considered an agricultural-industrial special exception under the Zoning Ordinance.

Section 59-C-9.3 (b).

A. Standard for Evaluation

Sec. 59-G-1.2.1. Standard for evaluation.

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

Analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic and environmental effects. It is understood that every special exception has some or all of these effects in varying degrees. What must be determined during the course of review is whether these effects are acceptable or will create adverse impacts sufficient to result in a denial. To that end, inherent adverse effects associated with the use must be determined. The general neighborhood affected by the proposed use is predominantly rural with a mixture of agricultural and one-family residential uses. The immediate neighborhood contains large lot residential uses to the south and predominantly agricultural or open space uses to the west, north and east.

The inherent, generic physical and operational characteristics arising from the given use, in this case the manufacture of mulch and compost, include delivery of and temporary storage of materials to be composted, operation of composting equipment, storage areas and vehicles picking up the finished product.

The use must have large areas where Awindrows≡ of the material in various stages of decomposition are placed, turned, and stored prior to being sold. The use inherently generates some noise in operating the necessary equipment and the trucks that bring the materials and take the product away. Noise associated with the use includes the machines that must occasionally grind up larger wood debris, and a machine (like a front-end loader) that keeps the rows properly turned to avoid inadequate oxygen getting to the materials while they recompose into the final product. As the Technical Staff properly concluded, there is no way to avoid these elements of intrusion totally if the mulch or compost manufacture is to be properly managed.

With the conditions recommended by the Technical Staff, the Staff did not find any significant non-inherent impacts of the proposed use at this site that would require a denial of the special exception. The Technical Staff considered the landscape contractor use and the compost/mulch manufacture use particularly closely. The Staff did not believe that the proposed ultimate size of either of these operations would cause excessive inherent impact on a site of this size, if properly managed as indicated in the statement of operations. Since the Technical Staff report was issued, Phases 2 and 3 of the mulch and compost manufacturing use were deleted from the proposal, substantially reducing the size and potential impacts of the proposed operation.

The Technical Staff did not identify any non-inherent effects and found that the inherent effects would be less than if the use were located in a more densely populated residential area. The Technical Staff concluded that the operations, as initially proposed by the Petition, subject to certain conditions of approval, would Acause no detrimental impacts to the surrounding area≡ (Exhibit 36 at 14).

All of the special exception activities proposed by the Petitioner are arranged on the site in a logical manner and are 50 feet or more from all property lines. The special exception site plan for the proposal (Exhibit 154) identifies where activities would occur on the site. The area proposed for mulch and compost manufacture is located at the eastern end of the site - away from Mt. Nebo Road and at least 900 feet from the nearest house.

The volume of traffic can present a non-inherent adverse effect. While increased volumes of traffic can occur in commercial and industrial areas with little impact, in a zone that includes residential uses, the timing and frequency can be of significant concern. However, in this case, much of the traffic would relate to the landscape contractor use. With Phases 2 and 3 of the mulch and composting operation deleted, the volume of mulch and compost available for third-parties would be limited. This would reduce what would have been a small number of trips per day under the original proposal. Based on the volume of traffic anticipated, the effects of traffic would be, at most, less than typical for a mulch and compost manufacturing use and, therefore, inherent. Even including the trips attributable to the landscape contractor use, the area road system would continue to operate efficiently with intersections at level of service A.

The Opposition asserts that the proposed use could pollute groundwater, cause odors and would be subject to fires. However, the evidence supports the conclusion that a small possibility of some odors or a fire is inherent in the use and, moreover, are not likely to occur. The Petitioner's expert witnesses explained, in detail, how the proper management of the operation would avoid these effects. If operated in accordance with the Statement of Operations (Exhibit 152) and the conditions of approval recommended by the Hearing Examiner, the use would have no non-inherent impacts and the inherent impacts would be sufficiently mitigated to support granting the petition.

While the Opposition expressed concern as to whether the Petitioner would actually operate the facility in accordance with the Statement of Operations and proposed conditions of approval, it must be recognized that the Petitioner's activities are subject to many State and County regulations and may be inspected by any of several governmental agencies. For example, the Petitioner must obtain a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services; the Petitioner must obtain a Natural Wood Waste Recycling Permit from the Maryland Department of the Environment and comply with State regulations regarding the processing of Natural Wood Waste; the Petitioner must obtain approval of a Nutrient Management Plan from the Maryland Department of Agriculture; the Petitioner must comply with the Air Pollution (Chapter 3) and Noise Pollution (Chapter 31B) requirements of the Montgomery County Code; the Petitioner must have a Certified Compost Operator (as defined by COMAR 15.18.04.03) supervise the operations; the Petitioner has agreed to permit federal, State and County inspectors to inspect the special exception use; and various records will be made available, upon request, to the Montgomery County Department of Permitting Services, Montgomery County Department of Environmental Protection, the Maryland Department of the Environment and the Maryland Department of Agriculture. In addition, the establishment of and required communications with the Community Liaison Committee can be expected to identify any problems before they get out of hand. Thus, if the Petitioner fails to take the necessary actions to avoid non-inherent impacts, the various required permits, including the special exception, can be revoked.

In summary, the Technical Staff concluded that there are no non-inherent adverse effects associated with the Petition that warrant denial. The Technical Staff found that, subject to the proposed conditions of approval (which have been enhanced since the date of the Technical Staff report to further protect the neighborhood), all of the physical and operational characteristics of the proposed use would be inherent. The undersigned concurs with the Technical Staff's findings.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a).

Sec. 59-G-1.21. General conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

The proposed use is permitted by special exception in the Rural Density Transfer Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The proposed use, as limited by the Statement of Operations and recommended conditions of approval, complies with the standards and requirements for the use in Division 59-G-2 as is discussed in more detail on pages 54 through 56, infra.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

As found by the Technical Staff, the Planning Board and Mr. Perrine, the proposed uses are consistent with the Master Plan for the Preservation of Agricultural and Rural Open Space, as they are specifically noted as Agricultural-Commercial uses in the zoning ordinance, and therefore appropriate, with the recommended limits on the uses, in the Rural Density Transfer Zone (see Exhibit 36, at page 16).

Moreover, the Technical Staff stated in its Report: AThe staff strongly believes the proposed uses are appropriate in the zone and are the particular types of uses encouraged in the master plan. They are agriculturally related uses in an agricultural zone. The staff has found the transportation and environmental aspects of the proposed uses acceptable - with limiting conditions noted. The staff is enthusiastic about the concept of the mulch/compost use. This is an excellent example of recycling of organic material, an agriculturally related use that turns biomatter byproducts into a useful non-chemical soil additive.≡ (Exhibit 36 at page 15).

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

The Technical Staff found that the proposes use, as limited by the Petitioner and by staff recommendations, would be in harmony with the general character of the rural area. Although, as the Opposition asserts, there are some residences to the south of the site along Mt. Nebo Road, the general character of the neighborhood is rural and the majority of the acreage is devoted to agricultural or open space uses. The proposed use would not increase the population and no new buildings or structures are proposed. The mulch and compost manufacturing operations would generate very little traffic and parking can easily be accommodated on-site and out of the sight of the nearest residences. By implementing measures to assure that traffic to and from the site does not use Mt. Nebo Road south of the site, the impact of traffic related to the proposed use on the residential portion of the neighborhood is significantly mitigated. The proposed use would be located at the eastern corner of the subject property, over one-half mile from the nearest public road (Mt. Nebo Road) and more than 900 feet from the nearest off-site residence. The on-site activities associated with the use would be amply screened from both Mt. Nebo Road and neighborhood residences.

The evidence reveals that a mulch and composting operation has been conducted on the site. The Petitioner asserts that the mulch and compost produced has been used in connection with the farming operation on the site. Although the Opposition challenges the Petitioner's characterization of the current activities, it is clear that some level of mulch and compost production is allowed as an accessory use in connection with a farm. The Petitioner proposes to continue the farming operations on the site. The evidence of record leads to the conclusion that the special exception use would involve activities of the same character

but, the activity would increase in intensity. However, with the elimination of Phases 2 and 3, one can conclude that the increase in intensity would not be unreasonable and, if the Petitioner complies with the recommended conditions of approval, the activity would be in harmony with the general character of the neighborhood. The only similar uses described by the witnesses are composting by area farmers for on-farm use which does not require a special exception and the MES facility which is not located in the neighborhood.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use, as limited by the Petitioner's Statement of Operation and the recommended conditions of approval, would not be detrimental to this rural area. As discussed above, the use would not have any non-inherent impacts. Other than a small amount of traffic, most neighbors would not notice the presence of the use. Despite the large distance between the Eglys and Thomassens houses and the processing area for the proposed use, the Eglys and Thomassens may be aware of some activity on the site. However, the distances from the neighbors houses would keep noise levels within the limits for noise in a residential area. Further, the recommended conditions of approval limit the use of the processor (the noisiest piece of equipment) to 3 weekdays per month between 8:30 a.m. and 4:30 p.m.

The Technical Staff concluded that:

Because only two phases of the mulch manufacture operation are recommended for approval, the staff does not believe it will be necessary for the application to install the buffer proposed by the Applicant. The area that would be closest to the Egly property is in the third phase, not recommended for approval at this time. If the Board should authorize approval for all three phases at this time, the staff recommends a condition that this buffer be created when the phase three operations begin.

Although both the second and third phases have been deleted from the Petitioner's proposal, the Petitioner has, nonetheless, agreed to provide screening along the Eglys property line. Thus, the Petitioner would provide more protection for the Eglys than recommended by the Technical Staff.

The recommended conditions of approval would ameliorate the effects of the use to the extent that the use would not be a material detriment to the

use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use, as limited by the Petitioner's Statement of Operations and by the recommended conditions of approval, would not cause objectively objectionable noise, vibrations, fumes, odors, dust or other impacts. As Technical Staff found, the potential for impact is limited by the large size of the property, the operation plan, and the specific limitations and modifications agreed to by the Petitioner.

While the Opposition understandably objects to any new noise or other impacts, the effects of the proposed use would be minimal. The inherent noise caused by truck doors and engines, dumping of materials to be composted, and the operation of equipment to turn the windrows, would be substantially diluted by the distance of the composting area from any residence. If the Petitioner had pursued its original plan to operate two additional phases of the mulch and compost manufacturing use including a location closer to the Eglys and Thomassens houses, the noise might not have been sufficiently attenuated. Although this issue was vigorously disputed, if the use is operated in accordance with the Statement of Operations (Exhibit 152) and the recommended conditions of approval, the preponderance of the evidence leads to the conclusion that the proposed use would not generate any noticeable fumes or odors or cause objectionable illumination or glare.

The Opposition expressed concern regarding noise, vibrations and dust that might be generated by trucks using the gravel driveway on the site. In response, the Petitioner agreed to maintain the driveway and to abide by a dust suppression plan. These measures combined with the distance of the driveway from abutting properties, the limits on the number and size of vehicles, the limited hours of operation and other restrictions on the use would prevent a material amount of noise, vibrations or dust from impacting nearby properties.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

As the Technical Staff and Mr. Perrine concluded, the proposed use is not located in a one-family residential area. The proposed special exception use is consistent with the recommendations of the Master Plan. The evidence of record does not reveal the existence of any other special exceptions in the neighborhood.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Opposition questioned whether pollutants would percolate into the ground water and pointed out that area residences are served by wells. Considerable evidence on this issue was presented by both sides. The preponderance of the evidence supports the finding that if the Petitioner complies with the Statement of Operations and recommended conditions of approval, this use would not pollute the neighborhood wells. By eliminating manure from the mix of materials to be composted, the Petitioner is left with natural wood waste that generally has the same chemical ingredients as a forest or farm. The base of wood chips and soil can be expected to filter water that would find its way to or through the bedrock. Surface flows would be directed by berms to a sediment control pond which would be maintained using recognized Best Management Practices. Any surface water that does not flow to the sediment control pond would be filtered by a fifty-foot vegetative buffer. Thus, it can be expected that the impact of the proposed use on the area water supply would not be materially different from the impact that would occur if the subject property were operated as a farm.

For the reasons discussed above and below, the Technical Staff and Mr. Perrine correctly concluded that the proposed use would not adversely affect the health, safety, security, morals, or general welfare of residents, visitors or workers in the area, irrespective of any adverse effects the use might have if established elsewhere in the zone.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

The proposed use would not require any public school facilities. This use, would require additional police or fire protection only if it is not operated in compliance with the Statement of Operations and recommended conditions of approval. The Petitioner is now well aware of the Opposition's concerns regarding the possibility of a fire such as the one that broke out at the MES facility. Although the size of the Petitioner's operation is much smaller than the MES facility, the Petitioner has agreed to take several actions to avoid a fire in the windrows. The absence of an

asphalt base, supervision of the operation by a Certified Compost Operator who would be on site or on call 24 hours per day, frequent monitoring of the windrows=temperatures, frequent turning of windrows, proper watering of windrows, a prohibition on smoking and other precautions make the likelihood of a fire extremely small. Further, in the unlikely event a fire does break out, the water in the twin ponds would be available to fire fighters through the dry hydrant. The water in the sediment pond would also be available and the windrows would be spaced to allow fire apparatus to drive between the windrows and to create a fire break to minimize the opportunity for fire to spread from one windrow to another. Similar precautions would be taken with respect to the Asurge pile.≡

Storm drainage is adequately addressed by the sediment control pond and the vegetative buffer. The Opposition expressed concern regarding the adequacy of water and sanitary facilities on site to serve the employees. However, the Petitioner submitted correspondence from Harry Sandberg of the Montgomery County Department of Permitting Services (Exhibit 149) stating that:

The septic system currently serving the on-site single family residence is adequate to serve 30 persons as proposed by Mr. Hughes on a strictly commercial basis.

It must be noted that this proposed use includes only one employee in addition to the other uses. The evidence reveals that this proposed use (as distinguished from the landscape contractor) would generate almost no noticeable additional traffic on Mt. Nebo Road and West Offutt Road. Even combined with the traffic that would be generated by the uses proposed in S-2527 and S-2528, all intersections in the area would operate at level of service A. By prohibiting special exception traffic south of the site on Mt. Nebo Road, the Petitioner would avoid those sections of Mt. Nebo Road where improvements to the public road might be necessary to handle the special exception traffic.

The Opposition asserts that Mt. Nebo Road north of the site and West Offutt Road are inadequate to accommodate the truck traffic that would be present if the special exception is granted. It is undisputed that these roads are rural in character with limited or, in some areas, no shoulder space. Thus, large vehicles must use care when passing other large vehicles heading in the other direction. However, the pickup trucks and any other trucks not exceeding 30 feet in length or 13 tons in weight would be able to safely pass the few other vehicles they may encounter on their way to or from the site. Eighteen-wheel tractor-trailers present a greater concern. However, the Petitioner has agreed to a condition of approval that only one such truck per month may visit the site in connection with the mulch and compost manufacturing use and it would not do so on the same

day as a tractor-trailer visits the site in connection with the other special exception uses.

It must be noted that, currently, refuse collection trucks and delivery trucks regularly use West Offutt Road and Mt. Nebo Road. The testimony of Terry Cummings was particularly helpful in evaluating this issue. Ms. Cummings operates an animal sanctuary located directly across Mt. Nebo Road from the Subject Property. Ms. Cummings testified that the sanctuary holds open houses that involve 900 to 1000 visitors on certain days and is frequently a field trip destination for school classes. According to Ms. Cummings, 4 or 5 school busses per day visit the sanctuary. It is apparent that sometimes an arriving or departing school bus must pass by another bus or truck on Mt. Nebo Road or West Offutt Road. Ms. Cummings is not aware of any collisions or other similar incidents involving school busses visiting or departing the sanctuary. Moreover, the school bus arrivals and departures which occur between 10:00 a.m. and 2:00 p.m. are at least as likely to conflict with truck traffic making deliveries to and collections from area farms or residences as would the unaffiliated landscape contractors=vehicles, which, like the Petitioner=s vehicles would attempt to leave the site shortly after 7:00 a.m. Further, the Petitioner=s vehicles would not be on the local roads at the same time of day as the school busses visiting the animal sanctuary.

Finally, although Mt. Nebo Road is a Rustic Road, the designation of Rustic Road status is not to be used to limit otherwise permitted land uses. Page 5 of the Rustic Roads Master Plan states: AThe rustic roads designation is not intended to affect the use of adjoining land except in the design of access to subdivision.≡ Further, the area of Mt. Nebo Road of primary interest in the Rustic Road Master Plan description is the southern end, where truck traffic is to be prohibited. The Plan states: AThe northern half (of Mt. Nebo) is generally flat with long, straight sections.≡ The site is located in the rural policy area, where the County=s roadway design standards do not include pedestrian facilities due to the relatively low level of pedestrian activity and inconsistency with rural character. The proposed uses are not expected to generate pedestrian activity along public roadways.

The undersigned agrees with the Technical Staff that the proposed use would be served by adequate public services and facilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

The proposed special exception does not require approval of a preliminary plan of subdivision. The undisputed finding of the Technical Staff was that the proposed use meets Local Area Transportation Review and the Policy Area Transportation Review requirements.

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The proposed use, as limited by the Statement of Operations and recommended conditions of approval, would not have a material detrimental effect on the safety of vehicular or pedestrian traffic. Although even one additional truck can have some effect, for the reasons discussed in detail above, the effects of the proposed use would be minimal and would not materially affect the safety of vehicular or pedestrian traffic.

C. Specific Standards

Sec. 59-G-2.30.000. Manufacture of mulch and composting.

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a wholesale or retail horticultural nursery, or a landscape contractor. If a combination of these uses is proposed, the Board opinion must specify which combination of uses is approved for the specified location.

- (1) The minimum area of the lot must be 2 acres if there are any on-site operations, including parking or loading of trucks or equipment.

The proposed use is on a parcel of land containing approximately 77 acres.

- (2) Areas for parking and loading of trucks and equipment as well as other on site operations must be located a minimum of 50 feet from any property line. Adequate screening and buffering to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.

The area to be devoted to mulch and compost manufacturing is located 50 feet from the closest property line, and 900 feet from the nearest off-site home. The area designated for parking trucks and equipment is approximately 200 feet from the nearest property line, and several hundred feet from the nearest off-site house. Although Technical Staff concluded that these distances are sufficient protection for adjoining properties, Staff recommended a fence along the Egly property line to provide some further protection from the activities. It must be noted that at the time the Technical Staff report was written two additional phases of the mulch and compost manufacturing operation were

being proposed. The intent of the Technical Staff was to provide screening from the third phase. Nonetheless, the Petitioner has agreed to install plantings along the currently unscreened portion of the common property line with the Eglys and to the south of the employee parking lot.

Also, the Petitioner agreed to install a two to three-foot high earth berm between the mulch and composting area and the Thomassens=property to the south. Evergreen trees would be planted on top of the berm every 15 feet (see Exhibit 154 and recommended condition of approval number 6).

The Petitioner proposes to use existing storage barns for storing equipment and supplies. One of the existing barns does not currently meet the setback requirement. The Petitioner has agreed to a condition of approval that this structure must be moved to meet the setback requirement before it can be used for the special exception use. All of the other existing structures meet the required setbacks.

- (3) The Board may regulate the hours of operation so as to prevent any adverse impact on adjoining uses.

The Petitioner agreed to limit the hours of operation for general equipment for this use to 8:30 a.m. to 4:30 p.m., or daylight hours, whichever is less, Monday through Friday. However deliveries may occur between 7:00 a.m. and 7:00 p.m., Monday through Friday. Saturday operations would be limited to pick-ups and deliveries in conjunction with the Landscape Contractor operation; provided that employees would be permitted to monitor the windrows and perform any necessary operations to maintain safe conditions at the site on Saturday and Sunday. The Petitioner also agreed to limit the use of a processor for grinding and/or shredding raw materials to no more than three (3) days per month. Use of this machine would be limited to weekdays between 8:30 a.m. and 4:30 p.m. The Petitioner agreed to keep a log to identify the days and hours of operation of the processor.

- (4) The Board may limit the number of motor vehicles operated in connection with the business or parked on the site so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles permitted; and must not be less than required for an industrial or manufacturing establishment or warehouse, under Article 59-E.

Trucks for this use (excluding trucks used for the Petitioner=s landscape contractor use) would be limited to no more than 8 commercial pickup trucks or similar vehicles (as models change) a maximum of 30 feet in length, with the largest having a roll-off (dump) bed with a 30 cubic yard capacity, weighing less than 26000 pounds (13 tons). In addition, one tractor-trailer visit per month would be allowed. The Petitioner would be required to keep a log of all vehicles visiting the site (see recommended condition of approval number 17). Parking requirements in Article 59-E relate to interior floor area, and no buildings are proposed for this use.

Limited equipment, as noted in the Statement of Operations, is used for the manufacturing process. Storage space for those machines is provided on the site.

- (5) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessary need to be controlled as stringently as the impact of a special exception in the residential zones.

The proposed use is categorized as an Agricultural-industrial use (Section 59-C-9.3(b)), and given the size and scale proposed, the Technical Staff correctly concluded that the manufacture of mulch and compost use is appropriate in the Rural Density Transfer Zone, which is an agricultural zone (Section 59-C-9.1). As stated earlier in this Report, although there are residences in the neighborhood, these residences are primarily south of the Subject Property, comprise a minority of the acreage in the general neighborhood, about the portion of Mt. Nebo Road that would not be used by traffic visiting the site, are generally Aupwind (using the prevailing wind pattern) of the site, and except for the Egly and Thomassen properties, do not adjoin the site.

59-G-1.22. Additional requirements.

- (a) The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.

In order to protect nearby properties and the general neighborhood, the Petitioner should be required to comply with all of the conditions of approval as set forth under Section V. Recommendations, below.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions, I recommend that Petition No. S-2529, for a special exception under the Rural Density Transfer Zone for a manufacture of mulch and composting use, on property known as Parcel P400, which is a 77-acre parcel located at 15315 Mt. Nebo Road on the east side of Mt. Nebo Road at a location near River Road, southwest of Poolesville, Maryland, be approved subject to the following conditions:

1. The Petitioner is bound by all of the Petitioner=s testimony and exhibits of record and is bound by the testimony of the Petitioner=s witnesses and attorneys= representations, to the extent that the evidence and representations are identified in this report and recommendation (Section 59-A-4.127).
2. The Petitioner is bound by all submitted statements and plans, as revised.
3. Access to the site for the three special exceptions is restricted to left turn ingress from and right turn egress onto Mt. Nebo Road via a channelized island. No special exception-related traffic to and from the site may use Mt. Nebo Road to the south to reach River Road. The Petitioner must inform contractors visiting the site and companies that have delivery activities associated with any of the three uses of this restriction and the Petitioner is responsible for their adherence to this restriction.
4. For the three special exceptions, a total of one outside contractor may be on the property per day. Such contractor may have more than one employee to carry out the work on the site.
5. Operations on the site are limited to the following, as shown on the amended Phasing Plan submitted by the Petitioner (Exhibit 161(b)):
 24. Phases 1, 2 and 3 of the Wholesale Nursery operation.
 25. Phases 1, 2 and 3 of the Landscape Contractor operation; however, vehicles associated with the Landscape Contracting operation shall not exceed twelve (12) vehicles stored on-site.
 26. Phase 1 of the Manufacture of Mulch and Composting operation.

6. The Petitioner shall install the landscaping described on the Revised Site Plan (Exhibit 154) prior to commencement of operations²⁶ and shall properly maintain the landscaping areas and promptly replace any dead trees. A majority of the trees for screening along the boundary line with the Thomassen property shall be Thuja AGreen Giant≡ evergreens. At the time of installation, all buffer trees shall be at least 5 feet in height above the top of the proposed 2 foot to 3 foot berm (for a total height above the general grade of 5 to 7 feet).

7. The only track vehicles used on the property shall be (1) a loader and (2) the vehicles used by the independent contractor to process materials for the Manufacturing of Mulch and Composting Special Exception operations (see Condition 26).

²⁶ The Petitioner proposed to install the screening during the first planting after the Board of Appeals approves the Special Exception.

8. There shall be no burial or burning of any material on the subject properties of these special exceptions.

9. Any relevant federal, state or county agency shall have the right to inspect any special exception, pursuant to standard procedures for access to the property.

10. The Petitioner shall designate a representative to coordinate with the Community Liaison Committee established in conjunction with these uses. The Community Liaison Committee shall include adjacent and confronting property owners and a representative from the Sugarloaf Citizen=s Association. The People=s Counsel shall be an ex officio member of the Committee. The Committee shall meet four times a year and meetings shall be arranged and noticed by the Petitioner.²⁷

11. All required logs shall be made available upon request by the Montgomery County Department of Permitting Services, Montgomery County Department of Environmental Protection, the Maryland Department of the Environment and the Maryland Department of Agriculture during normal business hours. Petitioner shall distribute copies of required logs to members of the Community Liaison Committee at meetings held pursuant to Condition 10, above. In addition, all logs shall be compiled annually and provided to the Board of Appeals, along with summaries of all Community Liaison Committee meetings for that year.

12. The Petitioner shall install a steel, double-lined 300 gallon tank for #2 diesel fuel. The tank shall be inspected regularly and replaced as needed.

13. The Petitioner shall maintain at least \$1,000,000 in liability insurance from an insurance company rated A or better. A Certificate of Insurance shall be made available upon request.

²⁷ The Petitioner proposed to meet only twice a year for 3 years at which time the Committee would disband. The Petitioner also objected to People=s Counsel being an ex officio member of the Committee. The condition recommended by the Hearing Examiner reflects modifications proposed by People=s Counsel.

14. If required by Chapter 22A of the Montgomery County Code, a Final Forest Conservation Plan must be submitted prior to issuance of a Sediment and Erosion Control Permit. This plan shall indicate placement of Category One conservation easement on all areas required for forest retention by the Forest Conservation Law.

15. Hours of operation for the operation of general equipment for this use are limited to 8:30 a.m. to 4:30 p.m., or daylight hours, whichever is less, Monday through Friday. However, deliveries may occur between 7:00 a.m. and 7:00 p.m., Monday through Friday. Saturday operations shall be limited to pick-ups and deliveries in conjunction with the Landscape Contractor operation; provided that employees will be permitted to monitor the windrows and perform any necessary operations to maintain safe conditions at the site on Saturday and Sunday.

16. The Petitioner must obtain approval of the required Sediment and Erosion Control Permit by Montgomery County Department of Permitting Services based on the plan prepared by the Montgomery County Soil Conservation District. The plan shall include, but not be limited to, fifty (50) foot wide grass swales, berms and sediment basins. All sedimentation and control measures must be located outside the stream valley buffer.

17. No more than eight (8) vehicles per day may make deliveries and/or pick-ups from the property, excluding deliveries and/or pick-ups via the vehicles used for the Landscape Contractor operation. Petitioner shall keep a log of all vehicles, except employees' personal vehicles, entering or leaving the property, that will contain the time of day the vehicle enters and departs the site, the truck type and size, the type of load, the truck number (for Petitioner's vehicles), as well as the special exception to which the trip is assigned and the entity responsible for the vehicle (e.g. Petitioner, third party contractor, etc.), and the times and dates of each delivery and/or pick-up, excluding Landscape Contractor pick-ups and deliveries.²⁸

²⁸ It should be noted that the log required by this recommended condition would contain details, requested by the Opposition, that were not included in the logs proposed by the Petitioner.

18. The Petitioner is limited to use of a processor for grinding and/or shredding raw materials to no more than three (3) days per month. Use of this machine is limited to weekdays between 8:30 a.m. and 4:30 p.m. A log, in the same form as the sample log submitted to the record, shall be maintained to identify the days and hours of operation of the processor (see Exhibit 150).

19. Only one tractor-trailer per month may visit the site in connection with this special exception. This visit may not be on the same day as a tractor-trailer visits the site in connection with either of the other special exceptions.

20. The Petitioner must receive all permits required by state or county agencies, including but not limited to, a Natural Wood Waste Recycling Facility Permit from the Maryland Department of Environment and registration to create a ASoil Conditioner≡ product (i.e., the compost) from the Maryland Department of Agriculture.

21. The operation must implement the fire prevention plan below:

a. No smoking is permitted on the site of this special exception.

b. No burning of wood waste is permitted on the site of this special exception.

27. A Adry≡ fire hydrant must be installed, along the gravel path leading into the property, alongside the existing ponds that will connect to the two ponds to allow Fire and Rescue Services to draw water from the ponds for fire suppression purposes. Water from the ponds may not be used for any other purpose.

d. The Petitioner shall maintain the existing gravel road (Exhibit 152). Such maintenance shall include, but not be limited to, monthly inspections to identify and fill any potholes and the addition of gravel or asphalt tabs to the entire road surface, as appropriate and as permitted by the Department of Permitting Services in accordance with the Statement of Operations.

28. The Petitioner must implement dust suppression measures relating to the gravel road and windrows as described in the Statement of Operations (Exhibit 152).

f. A Certified Compost Operator (as defined below) must regularly inspect the windrows. Windrows must be turned when internal temperatures reach 140 degrees Fahrenheit.

29. Windrow size is limited to ten (10) feet high, twenty (20) feet wide and three hundred (300) feet long. The surge pile is limited to twenty (20) feet high, twenty (20) feet wide and one hundred fifty (150) feet long.

22. The Petitioner may not accept any manure for use in the Manufacture of Mulch and Composting operation.

23. The Petitioner shall comply with the odor control measures in the Statement of Operations (Exhibit 152).

24. A sign identifying the hours of operation for deliveries and pick-ups and the emergency contact number shall be posted at the entrance to the property. The sign shall conform to the draft sign submitted to the record (Exhibit 151).

25. A duly qualified Certified Compost Operator (as defined by COMAR 15.18.04.03) must supervise the private contractors who run the processor or make deliveries to the Site, as well as supervise the inspection and maintenance of the windrows. The Certified Compost Operator shall be on duty or on call twenty-four (24) hours a day. The Petitioner shall submit to the Board of Appeals the names of all persons holding this certification.

26. Equipment to be used and/or stored on the site will include the following, or similar machinery: (1) a specialized windrow turner or windrow turner attachment for a tractor (tractor used on the farm); (2) a processor run by a typical tractor/combine diesel engine (such as a ABandit≡ recycler) to break down raw materials into smaller sizes (will be transported to site on an as-needed basis consistent with the requirements of recommended condition 18, above); (3) up to two tractors (also used on the farm) to manage and move materials; (4) up to two front-end or track loaders (2 2 - 5 cubic yard bucket) to manage and move materials (as used as part of the nursery operation and farm operation; (5) an additional two (2) loaders may be brought to the site by haulers when material or equipment is taken to the site, provided the loaders are not stored on site; and (6) a trammel screen, soil shredder and/or soil screen to sift larger pieces (i.e., partially decomposed material) from the final product.

27. The Petitioner must comply with Chapter 3, Air Pollution, and Chapter 31B, Noise Pollution (for residential receiving areas), of the Montgomery County Code.

28. Employees associated with this use are limited to one full-time employee to manage the operation, with assistance from up to two (2) additional employees, excluding the individual members of the Petitioner-LLC. However, up to three (3) additional employees, employed by an outside party, are permitted to assist an independent contractor associated with this special exception.

29. The Petitioner must obtain an approved Nutrient Management Plan from the Maryland Department of Agriculture for the special exception within six (6) months of approval.

30. Prior to abandonment of the Manufacture of Mulch and Composting use, the Petitioner must remove all materials associated with that special exception use from the site. In addition, the Petitioner must re-seed and stabilize all areas used in the special exception composting operations, as prescribed by the Montgomery County Soil Conservation Service.

31. Rows of finished compost product shall not exceed fifty (50) feet high, fifty (50) feet wide and one hundred (100) feet wide, excluding product stored under the existing pole barn. Rows of finished mulch shall not exceed twenty (20) feet high, twenty (20) feet wide and one hundred (100) feet long.

32. All raw Natural Wood Waste must be processed within 30 days of receipt.

33. No additives, such as phosphates, lime and fertilizer may be added to the compost or mulch.

34. Petitioner shall only accept Natural Wood Waste as defined in COMAR 29.04.09.02(B)(4), except that no food materials shall be accepted. Any solid waste other than Natural Wood Waste shall be stored in the appropriate container and promptly removed from the property.

Dated: November 5, 2003

Respectfully submitted,

Examiner
ZONING\TWINPONDS-S-2529.dec

David R. Podolsky, Hearing